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Security Council

Seventy-first year

Provisional

7707th meeting

Wednesday, 8 June 2016, 10 a.m.
New York

President:	Mr. Delattre	(France)
Members:	Angola	Mr. Lucas
	China	Mr. Li Yongsheng
	Egypt	Mr. Aboulatta
	Japan	Mr. Akahori
	Malaysia	Mr. Ibrahim
	New Zealand	Ms. Schwalger
	Russian Federation	Mr. Zagaynov
	Senegal	Mr. Ciss
	Spain	Ms. Pedros Carretero
	Ukraine	Mr. Yelchenko
	United Kingdom of Great Britain and Northern Ireland	Ms. Mulvein
	United States of America	Mr. Pressman
	Uruguay	Mr. Rosselli
	Venezuela (Bolivarian Republic of)	Mr. Méndez Graterol

Agenda

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

Report of the Office of Internal Oversight Services on the evaluation of the methods and work of the International Tribunal for the Former Yugoslavia (S/2016/441)

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Letter dated 17 May 2016 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council (S/2016/453)

Letter dated 17 May 2016 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council (S/2016/454)

The meeting was called to order at 10.05 a.m.

Adoption of the agenda

The agenda was adopted.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

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The President (*spoke in French*): In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representatives of Bosnia and Herzegovina, Croatia, Rwanda and Serbia to participate in this meeting.

In accordance with rule 39 of the Council's provisional rules of procedure, I invite the following briefers to participate in this meeting: Judge Carmel Agius, President of the International Tribunal for the Former Yugoslavia; Judge Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals; and Mr. Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia and Prosecutor of the International Residual Mechanism for Criminal Tribunals.

The Security Council will now begin its consideration of the item on its agenda.

I wish to draw the attention of Council members to document S/2016/441, which contains the report of the Office of Internal Oversight Services on the evaluation of the methods and work of the International Tribunal for the Former Yugoslavia. I also wish to draw the attention of members to document S/2016/453, which contains the text of a letter dated 17 May 2016 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council. I furthermore wish to draw the attention of Council members to document S/2016/454, which contains the text of a letter dated 17 May 2016 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 addressed to the President of the Security Council.

I now give the floor to Judge Agius.

Judge Agius: I am deeply honoured to address the Security Council once again as President of the International Criminal Tribunal for the Former Yugoslavia (ICTY), and to do so under the presidency of France. I would like to thank the President for the attention his country has given, and continues to give, to the matters that the Tribunal currently has pending before the Council.

In the Tribunal's completion strategy report (S/2016/454, annex), of 17 May 2016, members will find a comprehensive statement of activity covering the past six months. Further to that report, please allow me to give a brief overview of the current status of the Tribunal and measures undertaken to complete its mandate and ensure a smooth transition to the International Residual Mechanism for Criminal Tribunals.

We are reviewing the performance of the Tribunal's completion strategy at the best possible time with regard to results. I am pleased to report that, since my previous briefing to the Council (see S/PV.7574), in December 2015, every single case scheduled to be completed within the reporting period has been disposed of on time. Judgments were delivered in the appeal case of *Stanišić and Simatović* and in both the trials of

Radovan Karadžić and Vojislav Šešelj. In addition, on 14 December 2015, the judges of the Appeals Chamber delivered the final judgement in the largest appeal case ever adjudicated by the International Criminal Tribunal for Rwanda, namely, the *Nyiramasuhuko et al.* case, otherwise known as the *Butare* case. Following those judgments, only two trial cases, involving two individuals, and two appeal cases, involving eight individuals, are ongoing. One of the appeals, namely, the *Stanišić and Simatović* case, is scheduled to be finally disposed of on 30 June, as I promised to the Council in December.

In relation to the trial of Mr. Goran Hadžić, the Council will recall that, on 26 October 2015, the Trial Chamber found, by a majority decision, that the accused was fit to stand trial, but decided to stay the proceedings for an initial, renewable period of three months and to continue his provisional release. The prosecution appealed that decision and, on 4 March, the Appeals Chamber, presided over by me, granted the appeal in part. The Appeals Chamber invited, inter alia, the Trial Chamber to reassess as promptly as possible the accused's fitness to stand trial. On 24 March, with a public redacted version filed on 5 April, the Trial Chamber found, by a majority decision, that the accused was unfit to stand trial and stayed the proceedings indefinitely. I can share with members of the Security Council that I have been personally monitoring the developments in the *Hadžić* case throughout this entire period, mainly due to the advanced stage of the accused's illness. However, there have been developments since the completion strategy report was issued that I would like to update members on.

First, concerning the judges on the Bench, I reported to the Council in May that one judge had been transferred as of 1 May to the International Criminal Court to assume his functions as judge there, while remaining available at the ICTY for any pending matter on the *Hadžić* case. At the same time, the two other judges on the Bench indicated their readiness to explore cost-neutral solutions to their remuneration during the indefinite stay of the trial. Arrangements were in the process of being made with both judges when, on 19 May, the Prosecutor filed a motion for the formal termination of the proceedings in the *Hadžić* case. The defence has responded, and also agrees that the case should be terminated. I expect the Trial Chamber to issue a decision soon, hopefully before the end of this month.

Following the delivery of appeal judements in the *Stanišić and Župljanin* case and the likely termination of the *Hadžić* case, the terms of office of four judges will come to an end and the Tribunal will be left with a total of seven judges. In line with existing downsizing plans, staff members assigned to those cases will either depart the Tribunal following the completion of the cases or be reassigned to other cases.

With regard to the *Mladić* trial, I am very pleased with its progress and can confirm that the existing forecast of November 2017 remains unchanged. In relation to the *Prlić et al.* appeal, I again wish to draw to the Council's attention the fact that the case is the most voluminous appellate case in the history of the Tribunal, and will require not only time but adequate, uninterrupted resources. I can assure members that the Appeals Chamber, with myself as presiding judge, remains fully committed to completing the case by that date. I am pleased to note that the projected completion date of November 2017 has remained unchanged since it was first reported to the Council, in the November 2012 completion strategy report, and confirmed in all subsequent reports.

Let me now move on to contempt matters. As the Council is aware, following the arrests of Ratko Mladić and Goran Hadžić, in 2011, there are now no outstanding ICTY fugitives charged with serious violations of international humanitarian law. However, in a pending contempt case, there are currently three ICTY indictees whose arrest warrants are yet to be executed: Petar Jojić, Jovo Ostojić and Vjerica Radeta. I emphasize that the arrest warrants were issued over 16 months ago, on 19 January 2015. On 18 May 2016, the Representative of the Republic of Serbia informed the Trial Chamber of a first-instance ruling of the same date, issued by a single judge of the War Crimes Chamber of the High Court in Belgrade, which held that the conditions for surrendering and arresting the accused had not been met. This ruling was confirmed on 18 May by a chamber of three judges of the same Court, and the Republic of Serbia communicated both rulings to the Tribunal on 20 May.

Interference with the administration of justice strikes at the heart of what the Security Council and the Tribunal have, together, painstakingly and at great cost endeavoured to build since the birth of the Tribunal, and undermines the Tribunal's ability to carry out its work efficiently and fairly. Significantly, the single judge in Serbia who has now decided that the conditions for

transfer of the three indictees have not been met is the same judge who eight years ago in the *Petković* case decided exactly the opposite. Something is not right. Significantly also, and contrary to its own previous decisions, the High Court in Belgrade has now, to my enormous surprise, affirmed that Serbia has no duty to cooperate with the Tribunal on matters of contempt. This is very troubling and makes it imperative for me to express my serious concerns. I consider this development to be a grave step backwards from the status quo on cooperation with the Tribunal and an unacceptable disregard of the primacy of Tribunal law over domestic law of Serbia, mandated by the Security Council.

The Republic of Serbia has a duty to fully cooperate with the Tribunal in accordance with Security Council resolutions and the statute of the Tribunal. This means that Serbia has the duty to take any measures necessary to implement the provisions of both Security Council resolutions and the statute, including the obligation to comply with requests for assistance or orders issued by the Trial Chamber under article 29 of the Statute. Concluding these contempt proceedings is of the utmost importance to the Tribunal. I repeat that interference with the administration of justice undermines the integrity of our entire system. I remain hopeful that if there is good will, a solution can and will be found that will ensure compliance. On the Tribunal's part, I can assure Council members that everything is ready to ensure a speedy and fair trial once those three indictees are transferred to the Tribunal.

Turning to other matters, as Council members can see our trial and appeal activity is in the final stretch. Given the Tribunal's results in the last reporting period, any concerns about the Tribunal's commitment to concluding proceedings by the end of 2017 should be put to rest. At the same time, one serious hurdle remains — the matter of staff retention. As previously reported, this is an enormous challenge that cuts across all areas of the Tribunal's operations. While we are fully committed to the downsizing process, I must again stress the urgent need for the Tribunal to be able to retain our experienced and specialized staff members in order to complete our work on time. In our penultimate year of operation, experienced staff members continue to leave the Tribunal to take up more secure employment, and there is no doubt that the rate of attrition will increase as the end draws near.

The Tribunal is doing all it can to retain its staff, but without appropriate assistance and concrete measures it may face serious problems. The impact of staff attrition will be particularly damaging in the second half of the final year of the Tribunal. Past Presidents and I have called upon the Secretariat, the Security Council and the General Assembly to assist us in implementing strategies to retain staff. I again call upon the Council to assist us before we reach the point of no return. As President of the Tribunal, I have the ultimate responsibility of ensuring that all cases are concluded and that the Tribunal itself is closed on time. I also have the responsibility to ensure that our highly qualified administrative and judicial staff are working in motivating conditions that are also satisfactory at the contractual level. Affording the Tribunal appropriate predictability by providing staff with incentives, such as an end-of-service grant, will be a necessity if we are to maintain a high quality of staff and the capacity to conclude all our judicial work on time. This last chapter of the life of the Tribunal presents not normal but exceptional operational circumstances that call for or require exceptional remedies.

I take this opportunity to acknowledge the sterling work of my colleagues — all the judges of the Tribunal — as well as the immense contribution made by the Tribunal's staff in ensuring that cases are finished on time. In particular, I would like Security Council members to be aware of the critical role that staff members have played towards meeting the completion dates in the *Stanišić and Simatović*, *Butare*, *Karadžić* and *Šešelj* cases during the reporting period. I also want to thank staff members in the *Stanišić and Župljanin* appeal, over which I preside, who have been working literally around the clock to ensure that the 30 June 2016 target date is met. While this will not be the last hardworking team of the Tribunal, I wish to go on record, on behalf of my colleagues on the *Stanišić and Župljanin* bench, in praising the team's tireless efforts and personal sacrifices in the name of international justice. We have been very fortunate to work with such dedicated and loyal staff. For everyone working at the Tribunal, our work represents more than just a paid service; it is the fulfilment of an ideal and a contribution to justice and the promotion of peace and security in the former Yugoslavia.

As President of the Tribunal, I am determined to strengthen and consolidate the Tribunal's image, particularly throughout the former Yugoslavia. In order

to ensure that the Tribunal has a truly lasting impact, its work must be complemented by outreach and capacity-building efforts to increase local communities' access to information about its achievements, and to promote a greater understanding of the Tribunal's work and its contribution to peace and justice in the region. While primarily focusing on its core business, the Tribunal has also been diligently working on these matters. It is my intention to highlight and increase these efforts during the Tribunal's remaining life.

The Tribunal is engaged in a historic endeavour and must continue to be supported until the very end. We have come a long way in cementing the rule of international law and safeguarding the fundamental principles of peace and justice. Despite the challenges that the Tribunal is facing, we stand committed with the Security Council to ensure the efficient and orderly closure of this institution by the end of 2017.

Let me conclude by expressing, on behalf of all the judges and staff members of the ICTY, our sincere appreciation for the continuous support of the Governments represented on the Council. I would also like to thank the Secretariat for its invaluable advice, and last, but certainly not least, for the support received, especially from the Office of Legal Affairs.

Our joint efforts to bring to justice those who committed the most atrocious crimes in the former Yugoslavia send a powerful message to the world. Even though more than two decades have passed, and even though it has been a time-consuming and laborious process, we must and will continue to fight against the culture of impunity and for accountability and justice.

The President (*spoke in French*): I thank Judge Agius for his briefing.

I now give the floor to Judge Meron.

Judge Meron: It is an honour to appear before the Council once again to report on the work of the Mechanism for International Criminal Tribunals.

(*spoke in French*)

But first I wish to congratulate you, Sir, as Ambassador of France, on your country's accession to the presidency of the Security Council. As a permanent member of the Council, France plays a key role with respect to issues of international justice, and I convey my heartfelt wishes for success to the Security Council.

(*spoke in English*)

I also wish to express my gratitude to the Security Council's Informal Working Group on International Tribunals and to offer my particular thanks to Uruguay, which has assumed leadership of the Group. I very much look forward to working with His Excellency Ambassador Rosselli and Minister Patricia Benítez going forward.

I would be remiss if I did not once again express my sincere gratitude for the assistance provided to the Mechanism by the Office of Legal Affairs, and in particular by the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, Mr. Miguel de Serpa Soares, a tremendous ally for international justice; by the Assistant Secretary-General for Legal Affairs, Mr. Stephen Mathias; and by their whole team.

Finally, I wish to acknowledge both President Carmel Agius of the International Tribunal for the Former Yugoslavia (ICTY) and the new Prosecutor of the Mechanism, who is also the long-serving ICTY Prosecutor, Mr. Serge Brammertz. It is a pleasure to appear before the Council with both of them today.

I had the privilege of appearing before the Council six months ago as the Mechanism was undergoing the first review of its work by the Council. We appreciate the direction and guidance of the Council as to our work going forward as set forth in resolution 2256 (2015) and have paid attention to those matters, as my written report (S/2016/453, annex) demonstrates.

The past six months have seen a number of important developments at the Mechanism. On 15 December 2015, the ICTY Appeals Chamber delivered its judgement in the case of *Stanišić and Simatović*, ordering a retrial. Consistent with the transitional arrangements, the Mechanism is responsible for this retrial. I have assigned the case to a three-judge panel, and pre-trial proceedings are already well under way.

The month of March saw the delivery of two important trial judgements at the ICTY, in the cases of *Karadžić and Šešelj*. The pre-appeal proceedings in these cases are already under way in the Mechanism, where I have assigned the cases to two panels of judges in the Appeals Chamber.

During the pre-appeal proceedings in these cases, as in the pre-trial proceedings of *Stanišić and Simatović*, the full panel of judges is called upon to take part in addressing requests only if and as needed,

a practice that produces substantial reductions in the costs of judicial activities.

In addition to the three cases I have just mentioned, the Mechanism's judges continue to address a wide array of requests for various forms of relief, working on matters ranging from requests to provide assistance to national judicial authorities, to applications alleging contempt of court, and issuing nearly 200 decisions and orders during the reporting period. From the Republic of Korea to Portugal and from Madagascar to Uruguay, the Mechanism's judges have been active throughout the reporting period, working remotely from their homes and offices around the world and carrying out their judicial functions carefully, diligently and to the highest possible standards.

The reporting period saw a number of important advances in other areas of Mechanism responsibility as well. With the closure of the International Criminal Tribunal for Rwanda (ICTR) in December 2015, the Mechanism assumed responsibility for the remaining functions of the ICTR as of 1 January 2016. Once again, the transfer of these functions occurred seamlessly. Preparations are under way for the Mechanism to relocate to the new premises of the Arusha branch later this year as the construction project nears completion. We remain deeply appreciative of the support of the Government of the United Republic of Tanzania and the sustained assistance from various offices of the Secretariat in connection with the construction of the new, minimalist facilities designed to house the Arusha branch.

Important progress continues to be made in a number of other areas of the Mechanism, from the transfer of the Tribunals' records to the Mechanism and continued efforts to enhance access to the Tribunals' records, to the improvement of processes related to the provision of assistance to national jurisdictions. The legal and regulatory framework of the Mechanism has been strengthened and augmented during the reporting period, with a recent amendment to the rules of procedure and evidence and the issuance of a number of new practice directions and policies.

The Mechanism has also continued to benefit from regular audits by the Office of Internal Oversight Services, and I have been personally involved, and invested, in the ongoing study related to governance and institutional culture. I am confident that, as was the case with the review process, we will gain valuable insight into how the Mechanism can become even better as a result of this process. In the meantime, we continue to seek to maximize efficiencies and apply innovative new approaches to our work, such as by exploring ways to deploy cloud computing and telecommuting to facilitate the work of the judges carrying out their functions remotely.

As many members of the Council may recall, when last I appeared before the Council in December (see S/PV.7574), the then-Prosecutor of the Mechanism, Mr. Hassan Bubacar Jallow, reported that one of the remaining fugitives indicted by the ICTR, Mr. Ladislas Ntaganzwa, had been arrested. That was a significant achievement, not just for the Mechanism, but for international justice and for all of us who seek to ensure accountability. In March, and consistent with the referral of his case to the Republic of Rwanda for trial by the ICTR, Mr. Ntaganzwa was transferred to Rwanda. In accordance with its statute, the Mechanism is already monitoring the proceedings in Rwanda with regard to Mr. Ntaganzwa, thanks to the assistance of monitors from the Kenyan section of the International Commission of Jurists. The monitoring of the other cases referred for trial to Rwanda and France is ongoing.

With eight fugitives remaining — of whom three are to be tried by the Mechanism — the Mechanism's fugitive-tracking activities continue under the able leadership of the Mechanism's new Prosecutor, Mr. Serge Brammertz. However, we cannot do this alone. The sustained support and involvement of Member States in relation to those tracking activities is essential if we are to ensure that the remaining fugitives are apprehended and thereby carry out one of the essential functions entrusted to us.

The Mechanism is also reliant upon and deeply grateful to those States that have agreed to enforce sentences imposed by the ICTR, the ICTY or the Mechanism itself. I am very pleased to announce that a new agreement on the enforcement of sentences was recently concluded with the Republic of Mali. That new agreement reflects best practices in the field of detention, including the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the General Assembly last December (resolution 70/175). I sincerely hope that as we move ahead, additional States will step forward and enter into such enforcement agreements, thereby helping to expand the Mechanism's critically important enforcement capacity. In the meantime, I wish to acknowledge the important cooperation

and support received from the Government of the Republic of Senegal as the final steps are being taken to commence enforcement of sentences in Senegal.

The Mechanism continues to explore options to address the increasingly urgent situation of the small number of individuals in Arusha who have been acquitted by the ICTR or who have completed their sentences imposed by that Tribunal. However, despite our best efforts, we are, as the Council is well aware, dependent on the international community to help resolve this long-standing humanitarian challenge. Pending such resolution, the Mechanism has carefully reviewed the broad array of support that has been provided by the ICTR to those persons in Arusha, and is implementing a more limited, cost-effective approach.

As we move ahead into the next two-year period of our operations — one that will see the historic closure of the ICTY and the transfer of all remaining functions to the Mechanism — the Council has my pledge that we will continue to encapsulate and promulgate best practices, to innovate wherever possible and to seek ever greater efficiencies, while never forgetting our fundamental role as a court or the terrible atrocities that led to our establishment. In doing so, I am confident that the Mechanism will not only fulfil its responsibilities to its predecessor tribunals, to affected communities in Rwanda and the former Yugoslavia, to courageous victims and witnesses and to the Council, and do so to the highest possible standards, but that it will also serve as an emblem of what an international court and a United Nations institution can and should be — an embodiment of the international community's profound commitment to justice and the rule of law.

The President (*spoke in French*): I thank Judge Meron for his briefing.

I now give the floor to Mr. Brammertz.

Mr. Brammertz: I thank Council members for the opportunity to again address them on the work of the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals.

I will first address the work of the Office of the Prosecutor of the ICTY.

In this reporting period, judgements were issued in three cases, bringing the ICTY closer to completing its mandate at the end of next year. Last December, the ICTY Appeals Chamber granted my Office's appeal in the *Stanišić* and *Simatović* case, revoked the Trial Chamber's judgement and ordered a retrial. In March this year, the ICTY Trial Chamber unanimously convicted Radovan Karadžić of genocide, crimes against humanity and war crimes. He was sentenced to 40 years of imprisonment. Also in March this year, the ICTY Trial Chamber by majority acquitted Vojislav Šešelj of the charges against him. The Mechanism has appealed the acquittal. Further proceedings in all three of those cases will be conducted by the Mechanism, in accordance with resolution 1966 (2010) and the transitional arrangements.

My Office looks forward to the delivery of the appeal judgment in the *Stanišić and Župljanin* case at the end of this month. In relation to the *Prlić* appeal, we are continuing our preparations for the appeal hearing, which is anticipated next spring. We also continued our work in our two final trials, those of Ratko Mladić and Goran Hadžić. In the *Mladić* trial, the defence is in the final phase of presenting its evidence. It is anticipated that the final defence witness will be heard this month, and that closing arguments by both parties will be presented this fall. In the *Hadžić* trial, three weeks ago my Office filed a motion for termination of the proceedings. At this time, we see no alternative but to take that step.

In this final phase of the Tribunal's work, State cooperation remains essential to enabling the completion of our mandate. That includes my Office's access to documents, archives and witnesses in Bosnia and Herzegovina, Croatia and Serbia. My Office regrets that Serbia has turned away from the path of full cooperation with the Tribunal. As the President reported this morning, for a year and a half Serbia has failed to execute the Tribunal's arrest warrants and transfer three indictees to the Tribunal's custody. It should be noted that in the past, Serbia executed arrest warrants in similar contempt cases without problem or significant delay.

Unfortunately, that is unfortunately not the only reason for concern. It is troubling that Serbia has not yet appointed a new Chief War Crimes Prosecutor, despite having had at least a year to do so. It is difficult to understand why that crucial position remains vacant. And Serbia has not yet executed the sentence imposed by the Bosnian State Court in the *Djukić* case, which is widely recognized as an important test of Serbia's commitment to regional cooperation.

While my Office welcomed before the Council the adoption of National Strategy for the Prosecution of War Crimes for the Period 2016-2020, the overall situation raises legitimate doubts that Serbia has a real commitment to the goal of impartial accountability for war crimes. The continued glorification of convicted war criminals in that country compounds those doubts. It is now up to Serbia to demonstrate that it will honour its pledges to cooperate with the Tribunal, support accountability for war crimes and promote effective regional cooperation.

In regard to the Category II cases transferred by my Office to national prosecutors in Bosnia and Herzegovina, prosecutorial decisions have been taken in all but one case. Indictments have been confirmed and trial proceedings are now under way. For some Category II cases, Bosnian prosecutors have sought cooperation from Croatia. A number of delays and miscommunications have, however, prevented meaningful progress so far. My Office calls upon the Croatian Government to review its policy in relation to regional cooperation and to facilitate the processing of war crimes cases in the region. We will continue to liaise with our counterparts and to monitor developments.

As my Office has reported, in recent years there have been many positive developments in national war crimes justice and regional cooperation. Unfortunately, the political situation throughout the region is moving in the opposite direction. Too many politicians and public figures are denying well-established truths, inflaming ethnic tensions and repeating nationalistic slogans of the past. What would have been difficult to imagine just a few years ago is sadly commonplace today. As a result, the positive trend in regional cooperation in war crimes justice appears to be reversing.

Turning to the Office of the Prosecutor of the International Residual Mechanism for Criminal Tribunals, this reporting period marked the beginning of trial and appeal activities in The Hague. As discussed in more detail in my written report (S/2016/453, annex II), appeal proceedings have commenced in two Mechanism cases, *Karadžić* and *Šešelj*, and pretrial proceedings have commenced in the *Stanišić and Simatović* case.

Consistent with the Security Council's directions, the Mechanism's Office of the Prosecutor has utilized double-hatting and roster arrangements in order to ensure that the transition of responsibilities from the ICTY is smooth and cost-efficient. While respecting the different mandates of the two institutions, the one-office approach that has been put in place now allows staff to be flexibly deployed across both institutions, without the need to conduct time-consuming recruitment exercises. These measures have permitted the Mechanism's Office of the Prosecutor to carry out its ad hoc activities while remaining a small, temporary and efficient structure.

With regard to activities in Arusha, my Office has continued to monitor the cases referred and transferred to the national courts of France and Rwanda. In one case referred to Rwanda, the trial judgement was delivered in December 2015, convicting the accused and sentencing him to life imprisonment. My Office commends the Rwandan National Public Prosecution Authority for its work on this case. We now look forward to the expeditious completion of the appeal, as well as the trials in the two other referred cases. With respect to the two cases referred to France, I received updates on the status of those cases during my mission to Paris a few weeks ago. My Office will continue to liaise with French authorities and encourage the expeditious completion of those cases.

The Mechanism's Office of the Prosecutor is also firmly focused on locating and securing the arrests of the remaining eight fugitives indicted by the International Criminal Tribunal for Rwanda (ICTR), including the arrest warrants against Kabuga, Mpiranya and Bizimana. Beginning in March, we reviewed our tracking efforts and strategy, as part of which we redeployed resources from within existing capacity to provide further support. We also identified new avenues to pursue. My Office notes that State cooperation and the Council's support remain essential to locating and arresting fugitives.

The truth of what happened during the Rwandan genocide has been repeatedly established in the ICTR's judgments. Yet, today, genocide denial continues. To safeguard future generations, it is essential that there be education about the dangers of genocide ideology and discrimination. My Office urges all States to actively promote the truth and to stand against revisionism in all its forms.

In conclusion, the transition of responsibilities from the ICTY to the Mechanism continues, as foreseen in Security Council resolutions. My Office will also continue, within existing resources, to monitor and support national courts prosecuting war crimes

committed in the former Yugoslavia and Rwanda. In accordance with the completion strategies, greater accountability now depends on the ability of national criminal courts to continue the work of the ICTY and ICTR.

Finally, to support national justice efforts, it is important that we disseminate our experiences and lessons learned in the prosecution of these crimes. In that regard, my Office hopes that our publication on prosecuting conflict-related sexual violence, which was launched yesterday, is a helpful tool.

The President (*spoke in French*): I thank Mr. Brammertz for his briefing.

I now give the floor to members of the Council.

Mr. Rosselli (Uruguay) (*spoke in Spanish*): I wish to express appreciation for the comprehensive briefings on the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals delivered by President Carmel Agius, President President Theodor Meron and Prosecutor Serge Brammertz. I also take this opportunity to congratulate Judge Theodor Meron on the renewal of his mandate as President of the Residual Mechanism and Mr. Brammertz on his appointment as Prosecutor of the Mechanism.

As current Chair of the Informal Working Group on International Tribunals, I congratulate my predecessor, Ambassador Cristián Barros Melet, and his entire team for their excellent work leadingh the Informal Working Group over the past two years. I also appreciate the ongoing support of the Office of Legal Affairs and the United Nations Secretariat in fulfilling this task.

I wish to express Uruguay's firm commitment to the work of the International Criminal Tribunal for the Former Yugoslavia and the Residual Mechanism. My country recognizes their important contribution to international justice in situations of crimes against humanity, war crimes and crimes of genocide, as well as their contribution to national reconciliation in the countries concerned. We note with satisfaction the progress achieved in the judicial activities of the International Tribunal for the Former Yugoslavia, and we welcome the forecast that these activities will be concluded by the end of 2017.

We welcome the fact that since the arrest of Ratko Mladić and Goran Hadzić in 2011, no other fugitives have been accused by the Tribunal of grave violations of international humanitarian law. We take note of the pending challenges of the International Tribunal for the Former Yugoslavia in carrying out their completion strategies and the difficulties encountered along the way. The problem of staff retention, especially of middle- and high-level officials, was clearly described by President Agius, and his call for attention should be heard. Impediments to effective cooperation have also been highlighted by the President and Prosecutor of the International Tribunal for the Former Yugoslavia.

Political obstacles, technical difficulties, the lack of a regional legal framework are some of the reasons behind the situation. Faced with this, we must immediately open dialogue to find possible solutions, in particular in relation to the lack of information on arrest warrants, as noted in the report (S/2016/454, annex I). We also note Prosecutor Brammertz's statement concerning the lack of information on the disappeared, which represents for their families one of the main problems to be solved.

Uruguay recognizes the importance of making progress in identifying human remains and understands that it is not just an obligation to the victims' families, but that it also serves as a vital step towards national reconciliation. This conviction is based on my own country's recent experience. We went through the processes of truth, justice, recognition and reparations in order to move along the path to national reconciliation.

In regard to the Residual Mechanism, Uruguay is pleased to note that the forecast timeline of its legal activities are the same as those provided in the previous report of November 2015 (S/2015/883, annex I) with a few provisos in the latest report (S/2016/453, annex I). That means that, without prejudice to the Tribunal's particular manner of operating or the unforeseen or extraordinary events that may arise to affect it, there is a timeline that remains in effect, which we interpret to be a positive sign.

We recognize and value the important work of the Mechanism in supporting and protecting witnesses, in sentence enforcement and in monitoring the cases that have been forwarded by the ICTY and the ICTR to national jurisdictions. We take note of the priority that the Mechanism is giving to the search for and prosecution of the eight persons indicted by the ICTR who remain fugitives, as well as the importance of the cooperation of States to achieving those ends and to enforcing sentences, to having access to documents and

files and to reaching witnesses. We therefore take note of the appeal to the international community to reflect on measures that could be taken to encourage States to cooperate.

We would make a similar appeal with respect to the problems posed by the reintegration of released or acquitted persons and to the dialogue the Mechanism is undertaking with the States that have indicated their willingness to receive one or more of those persons. In that regard, we welcome and especially appreciate the efforts and the arrangements made by the President of the Mechanism.

Finally, we would like to express our full readiness to consider any new and updated proposal that the authorities of the International Criminal Tribunal for the Former Yugoslavia and the Mechanism consider to be of interest in the search for a solution to those and other problems. As Chair of the Informal Working Group on International Criminal Tribunals, we are committed to making every effort to achieve that end.

Mr. Ciss (Senegal) (*spoke in French*): My delegation welcomes today's briefing on the International Criminal Tribunals, organized by the French presidency of the Security Council.

I would like to thank Judge Carmel Agius, President of the International Tribunal for the Former Yugoslavia (ICTY); Judge Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals; and Mr. Serge Brammertz, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia and Prosecutor of the International Residual Mechanism for Criminal Tribunals. I especially the judges for their respective reports (S/2016/453, annex and S/2016/454, annex) and for their comprehensive briefings on the work of the Tribunals and on their completion strategies. I also wish to congratulate Ambassador Elbio Rosselli, Permanent Representative of Uruguay, and his team for their outstanding work at the helm of the Informal Working Group on International Tribunals.

In order to adjudicate the most serious crimes committed in Rwanda and the Balkans, the Security Council established the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia. The two courts, guided by the principles of fairness, impartiality and independence, have upheld respect for the rule of law, supported capacity-building at the national level, and made contributions to the processes of justice and reconciliation that have been essential for the achievement of peace.

We are pleased at the ICTY's fundamental role in strengthening the rule of law and in promoting long-term stability and reconciliation in the Western Balkans. In addition, its jurisprudence has contributed to the development of international criminal law in such areas as individual criminal responsibility and sexual violence. Similarly, we welcome the crucial work of the ICTR, which has helped to bring justice to the victims of the genocide in Rwanda by having the main perpetrators of these atrocities answer for their actions.

The substantial contributions of both Tribunals to the development of international criminal justice, the assignment of responsibility and the restoration of the rule of law in the former Yugoslavia and Rwanda are beyond a shadow of a doubt. That is also the case with respect to the Tribunals' strong commitment to fighting impunity for all those responsible for the serious violations of international humanitarian law that occurred in those two genocides. The International Mechanism, called to perform the residual functions of the Tribunals when it was established by resolution 1966 (2010), inherited that commitment. This unique entity, which was intended to be small and efficient and with a temporary mission, has also given us many reasons to be satisfied.

We acknowledge the crucial role played by these institutions and the work of the authorities who lead them. We reiterate our support for them as we call for greater efficiency, performance and streamlining in their activities. While we are aware of its heavy workload and significant efforts made to reduce delay, we nevertheless encourage the ICTY to take the steps needed to complete its work within the agreed time. We therefore share Prosecutor Brammertz's concern about staff attrition and congratulate him on the steps taken by his Office to strengthen the capacity of judicial institutions. I am thinking in particular of the training of prosecutors for national jurisdictions.

We reaffirm that the International Criminal Tribunals have played a historic role in the fight against impunity. We are convinced that there can be no lasting peace without justice, which is why the case of the remaining fugitives is of particular concern. We therefore call on States, particularly those in which the

fugitives might be found, to intensify their efforts to arrest them so that they can be prosecuted. In addition, the issue of relocating the eight persons who have been acquitted and the three others who have been released after serving their sentences and who remain in Arusha is challenging, and therefore deserves our full attention.

I would like to conclude by saying a few words on the issue of the enforcement of sentences, which was raised by Judge Meron. Senegal has recovered control of eight jail cells refurbished by the ICTR in a facility that meets international prison standards, and we are committed to making them fully operational as soon as possible.

Mr. Ibrahim (Malaysia): I thank the President for organizing today's important debate.

At the outset, I would like to congratulate Judge Meron and Mr. Brammertz for their recent appointments as the President and Prosecutor of the International Residual Mechanism for Criminal Tribunals, respectively. My delegation is grateful for the comprehensive briefings by the Presidents of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals as well by the Prosecutor from both institutions.

Malaysia welcomes the significant progress made by the International Criminal Tribunals during the reporting period. In particular, we acknowledge the closure of the International Criminal Tribunal for Rwanda (ICTR) last December, after the Appeals Chamber delivered its judgement in the *Nyiramasuhuko et al. ("Butare")* case. We are also encouraged by the smooth transfer of the ICTR's functions to the Residual Mechanism.

The closure of the ICTR after two decades of unyielding and dedicated efforts by the international community to ensure justice for the victims of the genocide in Rwanda constitutes a lasting legacy for international criminal justice and the global fight against impunity. We applaud the professionalism and commitment by all those who were involved in the successful conclusions and transitions of the ICTR. With the transfer of the ICTR's remaining cases and functions to the Residual Mechanism, we urge Member States to continue to support the Mechanism, especially in addressing outstanding challenges, among other things. Cooperation by the international community is crucial to tracking the eight remaining fugitives indited by the ICTR, to enforcing sentences and to relocating those who have served their sentences or been acquitted by the Tribunal.

Turning to the ICTY, we welcome the delivery of judgments in the *Karadžić* and *Šešelj* cases last March. In the case *Prosecutor v. Goran Hadžić*, we take note of the briefing by the ICTY President and look forward to reasonable, just and practical conclusions by the Chamber in view of the inability of the Tribunal to continue with the proceedings due to the health of the accused. On the whole, Malaysia is reassured by the commitment expressed by the President of the ICTY that the judicial work of the Tribunal remains on track to be completed by November 2017. We also acknowledge the intensified efforts by the Tribunal to implement its completion strategy within the stipulated time frame. That includes the implementation of double hatting in one of its approaches to integrate the staff and resources of the ICTY and the Residual Mechanism.

With regard to the continuing delay by Serbia to transfer three indictees to the ICTY for contempt charges, Malaysia urges full and immediate cooperation with the Tribunal, as obligated under the statute of the Tribunal. Prolonging the matter, especially against the backdrop of increasingly revisionist sentiment and the politicization of the proceedings in the region, would send the wrong signal to the international community on its commitment to justice and the rule of law.

On a similar note, we call on the relevant Member States of the former Yugoslavia to intensify the pace and effectiveness of war crimes prosecutions where the national authorities for cases being referred to national jurisdictions.

Malaysia also takes note of the evaluation report (S/2016/441) by the Office of Internal Oversight Services on matters and work pertaining to the ICTY. We urge the ICTY to seriously consider the recommendations in the report. However, the exercise should not divert resources away from the Tribunal's main mandate to conclude its remaining proceedings by the end of next year, particularly at this crucial stage.

As the first war crimes court created by the United Nations and the first international war tribunal since the Nuremberg Tribunal and the International Military Tribunal for the Far East, the ICTY has laid the foundations for international criminal justice and changed the landscape of international humanitarian law. We therefore believe that the Tribunal should continue to share its experiences and best practices

with the international community. In that regard, Malaysia welcomes the book launched by the Office of the Deputy Secretary last week focusing on the prosecutions of conflict-related sexual violence at the ICTY.

In conclusion, I wish to reiterate Malaysia's full support for the international criminal tribunals in ensuring accountability for the perpetrators of genocide, war crimes and crimes against humanity in the former Yugoslavia and Rwanda. Over 20 years have passed since the atrocities were committed, but our commitment to justice must not waver. We owe it to the victims and their loved ones to provide closure, justice and accountability for the atrocities committed against them. Their hopes and prayers must never be left unanswered.

Mr. Aboulatta (Egypt) (*spoke in Arabic*): At the outset, I would like to welcome Judge Theodor Meron, President of the International Residual Mechanism for Criminal Tribunals, and Judge Carmel Agius, President of the International Criminal Tribunal for the Former Yugoslavia (ICTY). I would also like to welcome Mr. Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia (ICTY). I would also like to thank them for all their efforts and for their comprehensive briefings.

The Security Council, when it established the International Criminal Tribunal for Rwanda (ICTR) and the ICTY, wished to underline the importance of the rule of law, to show that the international community was serious about countering war crimes and crimes against humanity, to ensure accountability for the perpetrators of such crimes and to underline the importance of fighting impunity at the international level.

The two Tribunals have done an excellent job in completing their tasks of tracking the accused, protecting witnesses and ensuring compensation for the victims, as well as fair trials. The ICTR concluded its work at the end of last year, and it is expected that the ICTY will also conclude its work at the end of next year. Therefore, the Residual Mechanism, with its two branches in The Hague and Arusha, would receive the pending cases from those two Tribunals. In that context, we would like to underscore our appreciation and satisfaction with all the efforts undertaken to ensure a smooth transition.

The international community must realize that accountability is not just a duty to respect the rights of the victims and hold criminals accountable for their crimes. Those two elements are extremely important, but it should also be a preventive mechanism to ensure that deplorable crimes against humanity are not repeated. It should be a message of warning to all those who might believe that human life and dignity can be taken lightly. Such individuals should know that they will never be safe from punishment and that such crimes will not be subject to any statute of limitations and will not be tolerated.

Despite all that, many horrific crimes continue to take place throughout the world. Our work is therefore far from finished. The international community must address with attention, impartiality and justice all those horrors without regard for their narrow political interests, because respect for humanity is above any other priority. We must send a single unambiguous message with regard to grave violations of international humanitarian law that tells perpetrators that their deeds will not go unpunished and that the rights the victims will be protected.

Achieving the objectives for which the two Tribunals were established depends on the Council's support and the full cooperation of all Members of the United Nations, including in tracking the three fugitives from the ICTR, who have now become the responsibility of the Residual Mechanism. The international community should continue to track them until they are brought to justice. Also, there is the important issue of the relocation of those who have either been acquitted or whose sentences have been served. In that context, I would like to underline that Egypt fully supports the work of the Residual Mechanism and highlights the importance of the optimum utilization of financial and administrative resources to facilitate its work in the best possible manner.

Mr. Méndez Graterol (Bolivarian Republic of Venezuela) (*spoke in Spanish*): At the outset, we welcome the presence and participation of Judge Carmel Agius, Judge Theodor Meron and Prosecutor Serge Brammertz. We thank them for the valuable briefing they have provided in compliance with resolutions 1534 (2004) and 1966 (2010).

The Bolivarian Republic of Venezuela supports the work of the International Tribunal for the Former Yugoslavia and the International Residual Mechanism

for Criminal Tribunals in their efforts to bring to justice the perpetrators of genocide, crimes against humanity and war crimes committed during the conflicts that affected the territories of the former Yugoslavia and whose violations of international humanitarian law and international human rights led to many victims. The work conducted by the tribunals reaffirms the commitment of the international community to combat impunity with respect to war crimes and crimes against humanity in order to ensure that such acts are never repeated. Such efforts contribute to strengthening the rule of law at the international level, particularly the international justice system.

With respect to the process of closing the International Tribunal for the Former Yugoslavia at the end of 2017, we support the progress made by that body in the past six months in handling the cases under its jurisdiction. We therefore encourage the Tribunal to continue its work in compliance with the timetable set for completing its mandate.

It is noteworthy that cooperation on the part of the States is essential in ensuring compliance with the goals set forth in resolution 1966 (2010).

These judicial organs have played a positive role in expressing the will of the international community to ensure justice on behalf of the victims of the heinous crimes committed during the armed conflict that affected the territories of the former Yugoslavia by way of prosecuting those responsible for such regrettable acts.

This year marks the twenty-third anniversary of the establishment of the International Tribunal for the former Yugoslavia. Its significant contribution to the rule of law, international justice and the fight against impunity is important in the regional reconciliation process. We urge those States to continue efforts to strengthen the rule of law at the international level with a focus on an impartial, transparent and independent judiciary.

In that context, we welcome the International Tribunal for the Former Yugoslavia's conclusion of proceedings against 151 of the 161 indictees, including two first-instance trials and two appeals still pending. The results achieved clearly demonstrated the efficiency and transparency of its working methods.

With respect to the work of the International Tribunal for the Former Yugoslavia, we welcome the judgment against Radovan Karadžić for genocide, crimes against humanity and violations of the laws or customs of war, by which he was sentenced to 40 years imprisonment. It is indeed a landmark decision in the fight against impunity and the application of justice in accordance with due process. Similarly, on 31 March, the Tribunal acquitted Vojislav Šešelj, President of the Serbian Radical Party and former member of the Assembly of the Republic of Serbia, of all charges against him. The ICTY Trial Chamber and the Prosecutor's Office appealed the decision. In both cases the appeal procedures fall under the jurisdiction of the Residual Mechanism to diligently and effectively decide the issues, while maintaining the principles of due process and judicial impartiality.

In reaffirming the independence and autonomy of the international tribunals, we believe that the politicization of the judicial process compromises the transparency and objectivity of their decisions. The prosecution of all of those, without exception, who are responsible for committing crimes in violation of human rights and international humanitarian law is necessary to strengthen the credibility of the international tribunals.

We share the concerns expressed by the President of the International Tribunal for the Former Yugoslavia about staffing. We reiterate that the continued employment of its officers is essential for the Tribunal to complete its mandate within the set time limit in the context of the application of justice.

However, in terms of progress in the cases under the Tribunal's jurisdiction, we note some procedural challenges related primarily to gaps in critical personnel in achieving the mandate of that body. We hope that such difficulties will be overcome in order not to impede the conclusion of the ongoing trials within the set timeline.

Moreover, we note the report of the Office of Internal Oversight Services (S/2016/441), which conducted an evaluation of the methods and work of the International Tribunal for the former Yugoslavia in implementing the completion strategy in accordance with resolution 2256 (2015), with a view to the Tribunal's implementation of measures to achieve its objectives that will neither divert resources nor weaken its functions. All of that is necessary to facilitate the fulfilment of its mandate in the smooth transfer of files and contempt cases, and the Residual Mechanism's protection of victims and witnesses.

We welcome the appointment of Mr. Theodor Meron as President of the International Residual Mechanism for Criminal Tribunals, and we commend the work of the Mechanism to date, including the development of a legal and regulatory framework, procedures and work practices that conform to the mandate of the Mechanism and are based on lessons learned and best practices of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and other tribunals.

Finally, we highlight the contribution of the International Tribunal for the Former Yugoslavia in strengthening international criminal justice and support the prompt and efficient completion of its work in accordance with the agreed timeline and budget to facilitate closure and complete the transition to the Residual Mechanism — all in order to promote the rule of law and end impunity in the fight against genocide, war crimes and crimes against humanity, thereby strengthening international peace and security.

Mr. Li Yongsheng (China) (*spoke in Chinese*): At the outset, I wish to thank President Agius and President Meron for their briefings on the work of the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals.

In the past six months, the ICTY continued to make progress in its work, delivering judgments in the *Radovan Karadžić* and *Vojislav Šešelj* cases. It also delivered a final judgment in the case *Prosecutor v. Jovica Stanišić and Franko Simatović*. The Appeals Chamber delivered the final judgment in the appeal of the *Nyiramasuhuko et al.* case ("*Butare*" case). China appreciates the above work and hopes that, under the leadership of President Agius, the Tribunal will continue to improve efficiency and accelerate its work with a view to completing its work by the end of 2017.

Pursuant to resolution 2256 (2015), the Office of Internal Oversight Services (OIOS) conducted an evaluation on the methods and work of the ICTY completion process and provided a number of valuable recommendations. China thanks OIOS for its work and believes that, based on its report (S/2016/441) and the aim of accommodating the specifics of the Tribunal, it is imperative that the ICTY take measures to improve its work based on the report's recommendations. China hopes that any progress achieved in that regard will be reflected in the Tribunal's next report.

With respect to the issues that have arisen in the context of the specific cooperation between the ICTY and Serbia, it is China's hope that the two sides will continue consultations with a view to resolving those issues.

China has noted the various activities, including judicial activities, carried out by the Residual Mechanism in the reporting period and views positively the measures undertaken by the Mechanism, including the "one-office" approach and double-hatting arrangements. It is hoped that the Mechanism will draw on best practices and lessons learned of other international tribunals, including the International Criminal Tribunal for Rwanda and the ICTY to continue improving efficiency and reducing costs, so as to live up to the Council's expectation for the Mechanism to be small, temporary and efficient.

The ICTY and the Residual Mechanism represent an important effort on the part of the international community in the fight against impunity, demonstrating its firm determination to support rule of law at the international level. China will continue to support the two institutions in the hope that they will further strengthen and improve their work with a view to meeting the expectations of the international community.

In conclusion, I wish to take this opportunity to thank Uruguay, as Chair of the Informal Working Group on International Tribunals, and the Office of Legal Affairs for their work.

Mrs. Schwalger (New Zealand): I, too, thank the Presidents and Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals for their briefings and reiterate New Zealand's strong support for their work.

As noted by colleagues this morning already, the past few months have seen several important developments regarding the completion of the work of the Tribunals. They include the conviction and sentencing of Radovan Karadžić and the arrest of International Criminal Tribunal for Rwanda (ICTR) fugitive Ladislas Ntaganzwa in the Democratic Republic of Congo and his imminent transfer to Rwanda for trial. We hope further progress can be made in apprehending those ICTR fugitives who remain at large, and encourage States to continue their cooperation with the Mechanism in that regard.

The ICTY will be able to achieve its completion strategy only if all the relevant States comply with their obligations under resolution 827 (1993). We are aware that Serbia faces some challenges, but we encourage the Government to maintain its positive record of cooperation with the Tribunal.

The Office of Internal Oversight Services report (S/2016/441) evaluating the implementation of the ICTY completion strategy between 2010 and 2015 paints a mixed picture of the Tribunal's performance. In response, the ICTY questioned the application of a results-based management approach to judicial institutions and the impact it could have on judicial independence and the right to a fair trial.

New Zealand has some sympathy with the ICTY's concerns. We accept that the Tribunal has room for improvement in some aspects, and that some administrative and other problems could have been avoided. However, we believe that the central priority for ICTY should remain the completion of its work by the end of 2017. At this late stage in the Tribunal's life cycle, a pragmatic approach to addressing the deficiencies identified by the Office is required. It is more important that lessons learned from the report are gathered and that they feed into the work of the Mechanism and future tribunals.

We hear the Tribunal's call for future reviews to be given sufficient time and to have a sharper focus on substantive issues. We also note its view on the need to take into account the unique nature of the institution, its judicial mandate and factors outside its control. The Tribunal's suggestion that a more productive approach would be to develop benchmarks for assessing the efficiency and effectiveness of international judicial institutions is worthy of consideration.

Also worthy of consideration is its suggestion to undertake a serious analysis of the factors affecting judicial efficiency. Agreement on the best approach will be needed prior to the evaluation of the Mechanism in two years' time. The Mechanism's first review has been completed. Overall, we believe it should be commended for its work to date. It is clearly mindful of the Security Council's vision for it as a small, temporary and efficient structure whose functions and size will diminish over time. We are pleased at the Mechanism's efforts to maximize its effectiveness and efficiency by drawing on best practices and lessons learned from the ICTR, the ICTY and other tribunals. Efforts to pursue new processes and working methods and maintain flexibility in staff assignments, including through the effective use of remote working practices, deserve acknowledgement.

There are, however, ongoing challenges. The Council's resolution 2256 (2015), adopted in December, encouraged the Mechanism and the Government of Rwanda to collaborate on matters related to the legacy of the ICTR, including in respect of access to archives. We hope there will be further progress on resolving the archives issue. We also note the ongoing question of how and where the 14 Rwandans in the safe house in Arusha should be relocated. We would encourage the Mechanism to develop a process for risk-based assessments in that regard. Such a process could be used for other situations, including in relation to those finishing their sentences outside of Rwanda.

It is important that the Council maintain its support for the ICTY through to the end of its mandate and that it support the Mechanism. Issues such as the need for an incentive structure must be addressed to avoid delays due to staff attrition later on. But more broadly, there is a need to have a serious conversation about how to practically, sustainably and cost-efficiently ensure accountability for serious international crimes. Part of that conversation should be about how the Council can do better in ensuring practical support to the machinery for international justice, and thus assist in expediting that work. In those conversations, we need to face up to the reality that real justice has real costs. It always has.

Mr. Zagaynov (Russian Federation) (*spoke in Russian*): We have studied the report of the President Carmel Agius of the International Criminal Tribunal for the Former Yugoslavia (ICTY) (S/2016/454, annex), and the report of President Theodor Meron of the International Residual Mechanism for Criminal Tribunals with regard to the state of affairs of the bodies they head over the past six months.

It is encouraging that the ICTY report contains no direct information on further lags in judicial proceedings. Nevertheless, we would like to recall that resolutions 2193 (2014) and 2256 (2015) called upon the Tribunal not only to not delay proceedings but also to take look at accelerating the cases under its jurisdiction. It is unfortunate that has not happened yet. Furthermore, the Tribunal is duly resourced, including with staffing and financial resources, so as to expediently conclude its work.

Against that backdrop, we are worried about the report's hinting at possible further hindrances in the work of the ICTY. We think that the case of *Goran Hadžić* could have long since been terminated for humanitarian reasons, which in this case are irrefutable. Doing so would optimize the work of the ICTY and would allow for resources to be reallocated to other cases. That way, there would be no reason to talk about the impossibility of accurate forecasting of the dates for terminating this case.

With regard to the contempt case initiated by the Tribunal in the framework of the concluded proceedings against Mr. Šešelj, this type of case is not part of the Tribunal's fundamental functions, nor is it decreed in the ICTY charter approved by Security Council resolutions. The jurisdiction in that regard has been instated by the Tribunal through its rules of procedure. In that regard, the ongoing operations of the ICTY due to what the report terms contempt cases are inadmissible by definition. There is a need to find other solutions.

In implementation of resolution 2256 (2015), the Office of Internal Oversight Services (OIOS) audited the work of the ICTY regarding implementation of the completion strategy. The conclusions of the inspectors are dismal. As noted in paragraph 54, the Tribunal failed to focus its work on a results-based strategy and to set clear goals for itself regarding time frames. On the whole, we agree with the recommendations of the OIOS auditors. The Office identified clear issues, which we have raised in the Security Council on several occasions.

In that regard, we were taken aback by the Tribunal's negative reaction to the OIOS recommendations and by its refusal to implement them. We do not agree with the reference in the ICTY comments to the unique features of the Tribunal's mandate. The difficult tasks facing the Tribunal are no justification for breaking with generally agreed upon standards of justice, including those relating to reasonable time frames for legal proceedings. Paragraph 11 of resolution 2256 (2015) instructs the Tribunal to report on the implementation of the OIOS recommendations in its future reports. We urge the ICTY to study and implement the recommendations of that oversight body. We would like to see substantive reporting on the matter in the next ICTY report.

Our delegation will follow closely the proceedings of the Residual Mechanism to ensure that there are no further mishaps in its activities. At this stage we think that the report of the Mechanism is not fully in keeping with the requirements of paragraph 20 of resolution 2256 (2015). In particular, the report contains no information on the staffing structure of the Mechanism or any details about the workload and related expenditures. Forecasts about the length of legal proceedings are really just estimates, and there is no information about other residual functions.

It should be recalled that the Mechanism was set up as a temporary and streamlined body. The period for its work is not determined by the Mechanism, but by the Security Council. Extending the operation of the Mechanism is subject to the Council's review of its activities. We believe it would be appropriate to consider the OIOS conclusions during the next review, among other things.

Ms. Pedros Carretero (Spain) (*spoke in Spanish*): It is an honour once again to have with us the Presidents of the International Criminal Tribunal for the Former Yugoslavia and of the International Residual Mechanism and the Prosecutor for both bodies. I congratulate Judge Meron and Prosecutor Brammertz on their respective appointments. I would also like to take this opportunity to thank the Ambassador of Uruguay and his entire team for their outstanding work at the helm of the Informal Working Group on International Tribunals. I also thank Judge Agius and Prosecutor Brammertz for their detailed briefings on the work of the Tribunal over the past six months, which have included very notable progress.

The sentencing of Radovan Karadžić illustrates that it is possible to bring to justice those responsible for violations of international humanitarian law. As stated by the Government of Spain in a press release on that occasion, his sentencing was

> "a resolute response to condemnable acts rooted in violent, exclusionary nationalism".

It is noteworthy that the three sentences handed down in the reporting period took place in the time frame stipulated in the previous report. That is a positive sign that attests to the credibility of the Tribunal's commitment to abide by the December 2017 completion date. We note that the circumstances are not easy, but we urge the Tribunal and its personnel not to let up in their efforts. The Tribunal's proposals for addressing the ongoing loss of essential qualified personnel in this final stage should be duly considered. The support

of the United Nations and of the Security Council continues to be essential in order that the Tribunal can complete its mandate.

We cannot fail to express our concern about the decrease in cooperation with the Tribunal by the States of the former Yugoslavia, as well as about the insufficient number, pace and effectiveness that continue to characterize the trials under way at the national level. That is specifically the case with regard to cases of mid- and high-level accused. Once again, we agree with the Prosecutor that more can, and should be, done. We urge those Governments to take the necessary measures to that end.

Combating impunity is, and should be, a joint undertaking. As important as it might be, the work of the International Criminal Tribunal for the Former Yugoslavia cannot alone serve the goal of ensuring justice and accountability for those responsible for violations of international humanitarian law during the conflict in the former Yugoslavia. As the Tribunal's closing date approaches, therefore, it is more important than ever that national judicial systems take over in order to continue the effort carried out to date by the international community as a whole. That is an inescapable responsibility, both out of respect for the victims and as a legacy to future generations.

Serbia, which on many ocassions has cooperated with the Tribunal in its more than two decades of operation, should continue to do so and carry out the three arrest and surrender orders issued in January 2015. Respect for the rule of law at the national and international levels alike demands compliance with the Tribunal's decisions, including those with which one may disagree.

Just a few weeks from concluding its initial period of operations, the Residual Mechanism has consolidated itself as small, temporary and efficient structure, thereby meeting the Council's mandate. Its active cooperation with the Office of Internal Oversight Services is evidence of its determined commitment to a model of international criminal justice that is compatible with seeking efficiency while also ensuring due process guarantees for the accused. We hope that trend will continue as this new phase of intensive and important judicial activity gets under way.

We urge the Mechanism not to give up on its efforts to find the eight persons indicted by the International Criminal Tribunal for Rwanda whose whereabouts remain unknown. During the previous debate here in the Council (see S/PV.7574) we learned of the arrest of Mr. Ntaganzwa, whose handover to Rwanda is excellent news. However, it is not enough. We reiterate our call to States where fugitives may be found or that may have information as to their whereabouts to cooperate without delay in finding, arresting and immediately handing them over to the Mechanism or to Rwandan authorities. Every day they remain at large is a genuine affront to their victims.

In conclusion, I would like to reiterate Spain's firm commitment to international criminal justice and our resolute support for the International Criminal Tribunal for the Former Yugoslavia and for the Residual Mechanism. In the face of the impunity that prevails in the majority of today's conflicts, their work helps us to continue to have faith in justice. Their legacy goes beyond Rwanda and the former Yugoslavia. It is a vindication of the dignity of all victims in all conflicts. It is a source for hope that, in spite difficulties, justice is possible.

Mr. Yelchenko (Ukraine): I would like to warmly welcome Presidents Theodor Meron and Carmel Agius and Prosecutor Serge Brammertz. I thank them for their comprehensive briefings. Let me also express our support for their professional and dedicated service. I also wish to thank Ambassador Elbio Rosselli of Uruguay for his work as Chair of the Informal Working Group on International Tribunals.

When, in early 1990s, the Security Council created two ad hoc Tribunals to try alleged perpetrators of genocide, war crimes, crimes against humanity and other serious violations of international humanitarian law, they found themselves in largely unchartered waters. The Tribunals faced countless challenges, including the need to further develop international criminal jurisprudence, ensure compliance with international human rights standards to undergird legitimacy and credibility, address such issues as prosecuting senior officials and gathering evidence for crimes that had occurred hundreds, or even thousands, of miles away, and many others. Yet the achievements of the Tribunals in the fight against impunity and delivering justice to victims are remarkable. And we can say with confidence that they succeeded in accomplishing their mandates and in paving the way for a major change in the functioning of the international justice system.

We welcome the closure of the International Criminal Tribunal for Rwanda,on 31 December 2015, and the take over by the Residual Mechanism for International Criminal Tribunals of all its files. The International Criminal Tribunal for the Former Yugoslavia (ICTY) is also on its way to concluding its functions. We hail the tremendous work both institutions have accomplished and their invaluable contribution to the development of international criminal law.

We note with satisfaction the ICTY's significant progress in completing its work during the reporting period by delivering a number of judgments, including the recent conclusion of the trial of Radovan Karadzic. That decision is clear evidence that those violating principles of international humanitarian law will be brought to justice sooner or later.

The number of concluded proceedings by the ICTY — 151 out of 161 — is a confirmation of the efficiency of the Tribunal. Taking into account that by the end of June 2016 only two trials and one appeal case will remain pending, we would like express our gratitude to staff members of the Tribunal for their hard work and dedication. In this context, we are concerned over staff attrition, as noted by the President of the ICTY in his report (S/2016/454, annex), and acknowledge the efforts of the Tribunal to resolve this issue. This problem is expected to become acute as the Tribunal approaches the end of its mandate. We therefore encourage the Tribunal to maintain all measures to minimize the impact of this challenging situation on the ability to deliver justice. We support the efforts of the Tribunal to implement its completion strategy and follow a timeline to finish its judicial work by the end of 2017.

We recognize the importance of regional and State cooperation to ensure that those responsible for crimes are held accountable, and we support the activities of the Office of the Prosecutor in this regard. At the same time, we are concerned about the failure to execute arrest warrants and transfer three indictees to the Tribunal's custody, in violation of international obligations to cooperate with the Tribunal. The issue of regional cooperation, as well as existing challenges with respect to national prosecutions of war crimes, require special attention and monitoring by the Office of the Prosecutor.

As to the International Residual Mechanism for Criminal Tribunals, we note that it has assumed responsibility for a number of functions of the International Criminal Tribunal for Rwanda and the ICTY, including with regard to a range of judicial activities, the enforcement of sentences, the protection of victims and witnesses, and the management of archives. One of the main tasks now is to ensure the smooth transition of ICTY's remaining functions. We support the work of the Mechanism in taking measures to improve operations and working methods and to ensure flexibility in staff assignment. The establishment of the Tribunals was a huge step forward in the fight against impunity. Their knowledge and expertise should not be wasted but used in the handling of human rights crimes cases at the national and international levels. The Tribunals' archives should be widely accessible. The lessons of the Tribunals should also be used to increase the capacity of national courts.

Ms. Mulvein (United Kingdom): I thank the Presidents of the International Tribunal for the Former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals, and the Prosecutor of the ICTY and the International Criminal Tribunal for Rwanda (ICTR) for the reports and today's briefings.

At the outset, let me stress the United Kingdom's continued support for the efforts of the ICTY and the Mechanism. They carry out essential work to tackle impunity. Faced with so many crises today, it is absolutely crucial that we speak with one voice when we say that there can be no impunity for the most serious international crimes.

As the recent trial of Radovan Karadžić at the ICTY shows, there is no end date for justice. The United Kingdom welcomes the completion of a number of ICTY cases: the *Karadžić* and *Šešelj* trials and the *Stanišić and Simatović* appeal. We welcome the fact that these are in line with the lastest timetable set out by the Tribunal. We are also pleased to hear that the *Mladić* case and the *Prlić* appeal are still on track. We look forward to the outcome of the Hadžić case and the remaining ICTY appeal. While we understand that it may be a challenge to meet the projected time frame in the *Prlić* appeal in particular, we hope that the November 2017 date will be met in all cases.

We understand the challenges of staff attrition. Let me take this opportunity to emphasize that the work of the ICTY staff is vital and highly valued by the United Kingdom. We rely on them to see their roles through until the end of the mandate. We commend the efforts of the ICTY leadership to retain staff, which we know

will continue. We are also pleased that the transition of the ICTY to the Mechanism is on schedule.

We note the report of the Office of Internal Oversight Services (OIOS) on the ICTY (S/2016/441) and we look forward to the Trbunal's reponse in its next report. It is vital to take a pragmatic approach and ensure that resources are not diverted from completing the ICTY's core task — its case work.

In the aftermath of conflict, any international tribunal, including the ICTY, can only address the cases of most serious concern. That does not mean that other crimes should not be addressed. On the contrary, it is vital that national justice systems ensure accountability. In that context, we note the ongoing concerns of the Office of the Prosecutor with the pace and effectiveness of national war crimes prosecutions in Bosnia and Herzegovina. There are positive developments, such as the progress in resolving pending Category II cases, and we continue to believe that these challenges can be overcome. We urge the Government of Bosnia and Herzegovina to work with the ICTY and other partners to do so.

We are also concerned that national war crimes prosecutions in Serbia are at a crucial point, with many more cases still needing investigating and prosecuting in Serbia against Serbian nationals, particularly cases against senior and mid-level accused. Again, there have been important achievements by the Serbian War Crimes Prosecutor's Office. We urge the Serbian Government to support efforts to ensure accountability, and in particular to appoint a new Chief War Crimes Prosecutor as a priority for the incoming Government.

We also urge cooperation between all States of the region. We are pleased that cooperation with the Prosecutor is satisfactory in most respects, and we call on all States to act on those areas where it is not. We note the recent decision of the High Court in Belgrade regarding transfer of the three defendants in contempt proceedings arising from the *Šešelj* case. Serbia has an obligation to cooperate with the ICTY, and we hope that the Serbian authorities will make every effort to ensure transfer to the ICTY of the individuals concerned.

Turning to the International Residual Mechanism for Criminal Tribunals, we are very pleased with its work over the past six months and, indeed, since its commencement. The Mechanism is moving into a very important new phase in its life, dealing with retrials and appeals from ICTY rulings. We are confident that the Mechanism will take all appropriate measures to ensure that these cases are handled efficiently and effectively in order to see to it that decisions are taken within a reasonable and in respect for due process. We look forward to receiving further information on timelines in the next report. We welcome the news that the recruitment of staff for the Mechanism is proceeding well and that staff with ICTY and ICTR experience are being drawn upon. Again, good staff are key to success.

We thank the Prosecutor for the continued efforts to locate and arrest fugitives, and we welcome the arrest and handover to Rwanda of Ladislas Ntaganzwa. We hope that the remaining eight fugitives can similarly be brought to justice, and urge all States to cooperate to that end. We also welcome the work being undertaken by the Mechanism on reviewing the level of support provided to acquitted and released persons in order to achieve appropriate efficiencies, and we support ongoing efforts concerning relocation.

We are pleased with the smooth handover to the Mechanism of the ICTR's functions on its closure, and we thank the Government of the United Republic of Tanzania for its continued strong support and interest in the Mechanism's new permanent premises in Arusha. We are also pleased that the Mechanism has implemented some of the recommendations from the OIOS audit and is working on others. The Mechanism has a vital role to play in the international criminal justice system, and we have every confidence that it will continue to carry out its residual functions appropriately.

Mr. Pressman (United States of America): I would like to begin by welcoming the President of the International Tribunal for the Former Yugoslavia (ICTY), Judge Agius, and to welcome and congratulate both Judge Meron on his reappointment in March as President of the International Residual Mechanism for Criminal Tribunals and Prosecutor Brammertz, who has assumed the role of Chief Prosecutor of the Mechanism while continued to serve as Chief Prosecutor of the ICTY.

The International Criminal Tribunal for Rwanda (ICTR), the International Tribunal for the Former Yugoslavia and, now, the International Residual Mechanism for Criminal Tribunals have been and are essential components in advancing peace and justice in Rwanda and the former Yugoslavia, and in the development of international law. Most recently, in March this year, Radovan Karadžić, a person whom

Ambassador Power recently described as "a man who believed he could do what he wanted when he wanted, consequences to others be damned", was found guilty and sentenced to 40 years in prison for genocide, crimes against humanity and violations of the laws and customs of war. More specifically, the underlying crimes attributed to Karadžić included persecution, extermination, murder, deportation, forcible transfer, terror and unlawful attacks on civilians, among others.

While legalisms and legal definitions can never adequately convey the inhumanity what happened, what was experienced and what was done to human beings, the pursuit of sober justice and the obedience to facts inherent in the process is essential if we are ever to stop these crimes from occurring again. In the 1995 order confirming the Srebrenica indictment against Karadžić, Judge Riad wrote that events of Srebrenica were "truly scenes from hell written on the darkest pages of human history". There were, he wrote "thousands of men executed and buried in mass graves; hundreds of men buried alive; men and women mutilated and slaughtered; children killed before their mother's eyes; a grandfather forced to eat the liver of his own grandson".

The establishment of facts as part of the process of advancing justice is critical to counter those who seek to distort facts, revise history or rewrite reality. That genocide occurred in Srebrenica was firmly established by both the ICTY and the International Court of Justice. There is no fact-based debate; this is our history. These well-established facts render all the more sad and shameful the Council's failure to be able to adopt a simple resolution commemorating the twentieth anniversary of Srebrenica. The facts are well established, and, as one speaker said following the veto last year of a draft resolution recognizing these facts, denial is the final insult to the victims. Denial is of course dangerous, but the challenge posed by denial also highlights one of the most important contributions of international justice in the process of establishing the facts and identifying individual responsibility. It is that it helps us understand what happened, how it happened, who is responsible — facts that, hopefully, allow us learn how to prevent such events from happening again.

Although some leaders, including in other contexts today, understandably fear trials and accountability, justice and, indeed, peace require our zealous pursuit of them. The Karadžić conviction and the December arrest by Congolese authorities of Ladislas Ntaganzwa are an important reminder of the fact that although time may pass, this imperative will not subside.

It is to that end that we must remain persistent in our pursuit of the eight remaining fugitives indicted by the International Criminal Tribunal for Rwanda. The Mechanism needs to re-energize its efforts to apprehend these men, and the States Members of our Organization, especially in the Great Lakes region of Africa, must proactively contribute to our shared efforts to hold these men accountable.

The United States of America will continue to its part, and we reiterate our offer of up to $5 million in rewards for information leading to the arrest of Fulgence Kayishema, Charles Sikubwabo, Aloys Ndimbati, Augustin Bizimana, Charles Ryandikayo, Phénéas Munyarugarama, Félicien Kabuga and Protais Mpiranya.

The United States asks that President Meron and Prosecutor Brammertz make tracking and apprehending these remaining fugitives the primary focus of the Mechanism's work going forward. It has been too long.

Before concluding, I would like to commend the ICTY, under the solid leadership of President Agius, on the progress made in completing its work over the past reporting period and for ensuring that justice is served expeditiously while respecting the rights of the accused. The Tribunal has not completed almost all of its cases, with only two defendants remaining at the trial stage and two appeals ongoing. We have confidence that the ICTY can meet its commitment of completing its work by the end of 2017.

In this regard, and in the light of President Agius's briefing, the United States would like to reiterate the importance of the full cooperation of all States concerned with the ICTY, including with respect to the execution of the arrest warrants issued by the ICTY for three individuals in a contempt case.

We should be circumspect of leaders who suggest that justice comes at the expense of reconciliation or unity. Trials may be inconvenient to those who bear responsibility for grave crimes, be they Milošević or Karadžić, Akayesu or Nahimana. But as our experience here has demonstrated, it is simply not true that pursuing justice frustrates reconciliation or upsets unity. It does the opposite. The pursuit of justice is vital to understanding the events of the dark past, to proving facts and disproving fictions. That some leaders in other

contexts may prefer a course other than accountability suggests that they are interested in advancing objectives unrelated to our collective pursuit of sustainable peace.

Mr. Lucas (Angola): We welcome and thank Judges Carmel Agius and Theodor Meron and Prosecutor Serge Brammertz for their comprehensive briefings on the activities of the International Tribunal for the Former Yugoslavia (ICTY) and of the Residual Mechanism. We commend Uruguay on its steering of the work of the Informal Working Group on International Tribunals.

The need to end impunity and to hold to account the perpetrators of war crimes and crimes against humanity led the Security Council to establish the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (ICTR) in 1993 and 1994, respectively, with mandates to prosecute those persons responsible for crimes of genocide, war crimes and violations of international humanitarian law committed in the territory of the former Yugoslavia, Rwanda and neighbouring States.

We acknowledge the establishment of these two special international criminal Tribunals as one of the most relevant initiatives of the United Nations for the preservation of the rule of international law and the safeguarding of the principles of peace and justice.

In the two decades of their existence, the ICTY and the ICTR have played a crucial role in enhancing the international criminal justice system and providing tools to national and international justice mechanisms by ensuring that those responsible for serious crimes against humanity are brought to justice and held to account.

The ICTR was established pursuant to resolution 955 (1994) and closed by the end of 2015, following its verdict on the appeal of the Butare case. It received outstanding support and international cooperation from Member States and left an important legacy in manuals on best practices and lessons learned on the tracking and arresting of renegades from international justice, on indictments for sexual and gender-based violence, and on referrals of international criminal cases to national jurisdictions.

The ICTR also made a substantial contribution to national reconciliation, to the restoration of peace and security, to the fight against impunity and to the development of international criminal justice, especially by seeking justice for the victims and survivors of the 1994 genocide in Rwanda.

In ending its work, it is expected from the Residual Mechanism, according to resolution 1966 (2010), that it track the renegades indicted by the ICTR and contribute to the arrest of the remaining eight fugitives.

The successive delays in the completion of the ICTY's activities have been a source of some tension in the Security Council, since, in accordance with its relevant resolutions, the ICTY should have closed its cases in 2010 or at the latest by the end of 2014. We took good note of the efforts by the Tribunal to quickly complete its work and of the judges' efforts in identifying means to speed up the pending cases. We note the Tribunal's commitment in meeting the deadline for its closure by the end of 2017. The recent convictions of war criminals and its efforts in completing the transfer of duties to the Residual Mechanism, in accordance with the pertinent Security Council resolution, attests to such a commitment.

Challenges facing the ICTY in staff-related matters, which have been delaying trials, and other instances of attrition are matters of concern. We hope that such delays will not affect the ongoing trials and that the Tribunal's judicial work will be effectively completed by the end of 2017.

The establishment of the International Residual Mechanism for Criminal Tribunals, in accordance with resolution 1966 (2010), was essential in ensuring that the closure of the International Criminal Tribunal for Rwanda (ICTR) would not permit the remaining fugitives to escape justice. However, the Mechanism still faces fundamental challenges, namely, to ensure that the remaining individuals indicted by the ICTR are apprehended and that the humanitarian issue related to the 14 individuals acquitted and released by the ICTR but unable to return to their countries of origin is resolved.

In order for the International Residual Mechanism to continue fulfilling its mandate expeditiously, efficiently and cost-effectively, States are called upon to cooperate with the Mechanism and the Government of Rwanda for the arrest and prosecution of the eight remaining fugitives indicted by the ICTR. In that regard, we call on States to investigate, arrest, prosecute or extradite, in accordance with their applicable international obligations, all fugitives accused of genocide who are residing in their territories. The Mechanism's

ongoing practice of communicating and cooperating with countries of the former Yugoslavia and Rwanda and keeping the authorities updated on its activities and on the transition of responsibilities, as well as assistance to national jurisdictions, is worth noting and encouraging. We acknowledge that the Mechanism continues to draw upon ICTY and ICTR best practices and lessons learned in pursuing new ways to improve its operations, procedures and working methods and to maintain flexibility in its staff assignments. That is aimed at maximizing its effectiveness and efficiency.

In conclusion, we would like to point out that the tenets of international criminal justice, embodied in the criminal tribunals for the former Yugoslavia and Rwanda, were crucial to the recovery process following the appalling events that occurred in those territories. The establishment of those Tribunals, pursuant to Security Council decisions, was a response to the public uproar against the atrocities committed in the former Yugoslavia and Rwanda. They were instrumental in preserving trust in international law; to ensuring that those responsible for serious violations of human rights and international law faced trial and punishment; to ensuring that judicial mechanisms were put in place as a warning that such crimes would not be left unpunished; and to ensuring that justice was delivered to the victims when egregious crimes against humanity were still being committed on a disturbing scale.

Mr. Akahori (Japan): I would like to begin by thanking President Agius, President Meron and Prosecutor Brammertz for their briefings and their respective reports (S/2016/453, annex and S/2016/454, annex).

Japan is committed to the establishment of the rule of law and attaches great importance to the activities of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals. I would like to assure the Presidents and the Prosecutor of Japan's full support to the work of their bodies.

With regard to the work of the ICTY, we appreciate the efforts made by the Tribunal to deliver judgements on the *Karadžić* and *Šešelj* cases in March, as projected, despite serious staff attrition. We are also pleased to learn that the judgment on the *Stanišić* and *Simatović* case is likely to meet the envisaged June date. Let me commend the leadership of the Presidents and the Prosecutor for those actions, and I call upon them to keep the timeline of the judicial activity as projected, while respecting due process.

The Tribunal can fulfil its mandate only when it receives the necessary cooperation from Member States. We recall that Member States have the obligation to cooperate fully with the ICTY, and urge the relevant States to implement their obligations.

Turning to the Mechanism, resolution 1966 (2010) mandated the Mechanism as a small, temporary and effective judicial organ to take over the activity and legacy of the ICTY and the International Criminal Tribunal for Rwanda (ICTR). We are pleased to hear that the Mechanism has been trying to be as efficient as possible by implementing various innovative measures, such as the "one-office" approach in the Office of the Prosecutor, while ensuring smooth and sound judicial activities. However, we note with concern that the construction of the new permanent premises in Arusha is facing a slight delay. We hope the project will be completed by the end of this year and expect strong leadership by the President and the Registrar.

Like the ICTY, Member States have to cooperate fully with the Mechanism. In that respect, we are happy to learn that the United Nations and Mali signed an agreement on enforcement of sentences of imprisonment. We also welcome the cooperation by the Government of the Democratic Republic of the Congo in implementing resolution 2256 (2015) to transfer Mr. Ladislas Ntaganzwa to the Rwandan authorities. We look forward to more such examples in the future.

Before concluding, let me reiterate Japan's support for the activities of both the ICTY and the Mechanism. We hope that they will contribute further to the development of international criminal justice.

The President (*spoke in French*): I shall now make a statement in my national capacity.

I thank Presidents Meron and Agius and Prosecutor Brammertz for their respective reports (S/2016/453, annex and S/2016/454, annex) and briefings. France reiterates its thanks and affirms its support to all staff of the Tribunals for the work undertaken in order to successfully complete the judicial proceedings. We are all aware of the importance of everyone mobilizing. It is important to uphold the time frame set forth by the Security Council.

With regard to the International Criminal Tribunal for the former Yugoslavia, France takes note that at

this stage two cases remain in trial for two indictees and two in appeal. The Tribunal has therefore handed down sentences in 151 out of the 161 individuals brought before the ICTY. France attaches the greatest importance to the fact that, in the framework of the completion strategy, the Tribunal continues to serve justice, fully upholding due process, and it should be provided with all necessary cooperation. The ICTY has abided by the rules in the reporting period. France recalls that, pursuant to resolution 2256 (2015), the Security Council requested that the Tribunal conclude its work according to a set time frame, in the light of its closure, by handing over its activities to the Mechanism.

Over the reporting period and in line with resolution 2256 (2015), the Office of Internal Oversight Services carried out an assessment of the methods and work of the International Tribunal for the former Yugoslavia and submitted its report (S/26/441) on 1 June. France welcomes the Tribunal's cooperation in that exercise. The report underscores the high quality work of the Tribunal and its efforts in the completion strategy, in particular in the area of management, as well as necessary improvements made for better efficiency.

We also highlight the interest expressed by the Tribunal itself regarding the evaluation exercise, stating that it should be more far-reaching using the necessary means and in a manner suitable for a judicial institution. The evaluation approach is totally compatible with the idea of the independence of the judiciary and even ensures the sound administration of justice, which is itself an indispensable mark of the credibility of the international criminal justice. In that respect, pursuant to paragraph 11 of resolution 2256 (2015), France expects the Tribunal "to report on the implementation of the OIOS recommendations in its next six-monthly report". This is particularly the case regarding the implementation of part of a code of conduct and a disciplinary mechanism applying to judges, as well as a centralized information system on staff reductions. France would like to see this approach applied across the board and in a professional manner. In particular, I stress the recommendation of the Office of Internal Oversight Services that the decisions handed down and their proceedings be analysed so as to ensure progress in international criminal justice as a whole and to identify what merits being replicated and what should be done differently in the future. Such an evaluation by practitioners would further enrich the legacy of these jurisdictions.

The ICTY and International Criminal Tribunal for Rwanda (ICTR) branches of the Residual Mechanism have well begun the transition to ensure that the work of justice continues to run its course. We wish to emphasize the unique opportunity that the Mechanism affords for drawing on the experience of the two Tribunals and, in so doing, combining the best working methods. We recall the provisional nature of the Mechanism's mandate, which requires the adoption of a tailored management that duly accommodates the diversity of legal systems and balanced equitable geographical representation.

This debate is a time for the Council to welcome the major contribution of the Tribunals in the service of the fight against impunity, of reconciliation and of identifying the work that States must now do to ensure that this work of justice is maintained over time. The States concerned must henceforth continue the construction of the rule of law in which the independence of the judiciary must be fully ensured. The prosecution of criminals considered mid-level should remain a national priority and be the subject of enhanced cooperation and regional assistance.

France maintains its support of the Mechanism, including the arrest of fugitives targeted by arrest warrants issued by the Tribunal. Furthermore, I wish to indicate that the two cases referred to France by the ICTR are being handled with all the necessary diligence and rigor, under the supervision and in constant contact with the ICTR and the Residual Mechanism. In that regard, I recall that France is the only State, alongside Rwanda, that has accepted case transfers.

In conclusion, I thank the Ambassador of Uruguay, Chairman of the Informal Working Group on International Tribunals, and his entire team, the representatives of the International Tribunals, the Office of Legal Affairs and the Office of Internal Oversight Services for their efforts to implement the transitions pursuant to resolutions 1966 (2010) and 2193 (2014). More than ever, combating impunity should be at the core of the Council's actions, as justice is a prerequisite of lasting peace and security.

I now resume my functions as President of the Council.

I give the floor to the representative of Rwanda.

Mr. Nibishaka (Rwanda): At the outset, let me congratulate the delegation of France through you, Sir,

on assuming the presidency of the Security Council for the month of June. I also thank Judge Theodor Meron, Judge Carmel Agius and Chief Prosecutor Serge Brammertz for their respective briefings.

As we reflect on the milestone achieved last year with the closure of the International Criminal Tribunal for Rwanda (ICTR), it is with satisfaction that we recognize that the 93 individuals indicted for genocide by the ICTR were the primary masterminds of that crime, in addition to the national and local leaders who were beyond the reach of Rwandan justice, as they were international fugitives. The Tribunal represents an immense contribution to the jurisprudence of the crime of genocide and to post-genocide reconciliation and healing in Rwanda.

It is regrettable, however, that eight ICTR indicted fugitives, as well as other suspects on whom we have ample and undisputable evidence, remain at large. We reiterate our call on all Member States, especially those still harbouring fugitives responsible for genocide, to honour their moral and legal obligations to the Charter of the United Nations and the Convention on the Prevention and Punishment of the Crime of Genocide. There is no legal justification whatsoever for the fact that those individuals have neither been tried nor sent to where they can be tried. Our collective efforts should be focused on ensuring that every suspect must have his or her day in court at the International Residual Mechanism for Criminal Tribunals, in the countries where they now are or extradited and tried in Rwanda's specialized international crimes chamber of the High Court. Rwanda will not rest until each one of them has been tried. We owe that to the millions of victims and countless survivors. It is our hope that the Chief Prosecutor's clear commitment and willingness to engage fellow prosecutors in national capitals harbouring those fugitives will lead to eventual arrests, extraditions and trials.

We remain extremely concerned at the delays encountered in the investigations and proceedings in the case against Laurent Bucyibaruta. Equally important is the trial of Octavian Ngenzi and Tito Barahira in the Paris Criminal Court. It must be expedited and conducted in an impartial and independent atmosphere. In addition, we remain extremely concerned by last year's decision of the French prosecution to drop charges against Father Wenceslas Munyeshyaka, a decision that contradicts the nature and scale of the crimes committed in the light of available evidence. On our part, we continue to meet our obligation with regard to cases referred to Rwanda, including the recent conviction of Jean Uwinkindi for genocide and crimes against humanity.

Allow me to return to the issue of the ICTR archives, which is an important matter to the Government of Rwanda and its people. The ICTR archives are the most comprehensive account of the 1994 genocide against the Tutsi. It is our painful history — a piece of history that Rwandans will never stop demanding for relocation to Rwanda. The primary beneficiary should first and foremost be the people concerned as the sole proprietors of such history. We recognize that they are United Nations property, but there should be no ambiguity in our understanding of the matter. Those archives should be relocated to Rwanda upon the completion of the Mechanism's mandate. The presence of the ICTR archives in Rwanda would continue to be a reminder to Rwandans of what happened in our country and to preserve the country's historical records of that particularly catastrophic occurrence. It is of the utmost importance that we preserve them for future generations and that the archives act as a tribute to those who suffered.

In conclusion, let me also concur with the Chief Prosecutor on the danger of genocide ideology and denial. Such a danger, as we witnessed in 1994, is that the genocide does not occur in a vacuum but is planned and executed. It starts with an ideology and grows in phases. That is why, when we have men and women out there who still engage in genocide ideology, it calls on all of us to embody the responsibility to educate young generations and to fight anyattempts to further dehumanize the survivors. Equally, the fact that we have men and women out there who still engage in ethnic division and who use it as their only stepping stone for political relevance should serve as a call on all of us to collectively assume responsibility to do what it takes to uproot this evil through education, cooperation and legislation.

The President (*spoke in French*): I now give the floor to the representative of Serbia.

Mr. Obradović (Serbia): I thank you, Sir, for the opportunity to speak to the Council again. Before I proceed to address the important topic on the Council's agenda today, I would like to welcome our esteemed guests from The Hague, the Presidents and Prosecutor of the International Criminal Tribunal for

the former Yugoslavia (ICTY) and the Mechanism for International Criminal Tribunals. I thank them for their semi-annual reports.

Serbia remains firmly committed to cooperating with the ICTY, while the Serbian domestic judiciary continues to fight impunity for core international crimes perpetrated during the armed conflict in the former Yugoslavia. In the reporting period, my Government duly executed warrants of arrest against Mr. Jovica Stanišić and Mr. Franko Simatović, the two indictees acquitted by the Trial Chamber, whose first-instance judgment was quashed on appeal on 15 December 2015. These ICTY arrest warrants were the first to be executed, dating back to the time of the arrest, in 2011, of indictees Ratko Mladić and Goran Hadžić, who were also arrested by my country. Somehow this important information did not find its way into the Prosecutor's report.

Today, the ICTY completion strategy relies heavily on the cooperation of the Serbian Government, in particular in cases of provisional release. In the past six months, Serbian agencies were called upon to report to the ICTY, in some cases on a daily basis, on the compliance with the terms of their provisional release of indictees Goran Hadžić, Jovica Stanišić and Mr. Franko Simatović and of convicted individuals Radivoje Miletić and Drago Nikolić, who passed away while he was in Serbia. The terms and conditions of their provisional release were determined by the ICTY Judicial Chambers and sometimes included surveillance 24 hours a day. Serbia has a perfect record in carrying out the guarantees its Government provided for the process of provisional release. In addition, it has fully complied with its specific duty to report to the Appeals Chamber on the progress of the medical treatment of indictee Vojislav Šešelj during his provisional stay in Serbia.

The ICTY Prosecutor acknowledges in his report (S/2016/453, annex II) that he has free access to evidence located in Serbia, such as documents, archives and witnesses, while the same conditions, in accordance with the principle of equality of arms, are maintained for defence counsel. So far, Serbia has received 2,170 requests for assistance from the Office of the ICTY Prosecutor and 1,331 requests from various defence teams; no pending requests for assistance or disputes in that regard are recorded. These statistics are a telling illustration of the dedication of my country to the process of cooperation with the ICTY, and they stack up quite well against the records of the Prosecutor of the International Criminal Court, for instance. The efforts behind the statistics deserve full international recognition.

As suggested in my statement to the Council in December 2015 (see S/PV.7574), the Serbian Government has now adopted a national strategy on the prosecution of war crimes. The strategy is aimed at improving the efficiency of domestic war crimes proceedings and at promoting regional cooperation in this sensitive area. It reflects my Government's commitment to accountability for core international crimes, regardless of the national, ethnic or religious status of the perpetrator or the victim. For this and other reasons, Serbia rightly expects that all other countries of the former Yugoslavia share the same objectives and act in accordance with the principles of international humanitarian law.

In that context, let me recall that, since June 2015, I have drawn the attention of the Council to the fact that, in spite of the ICTY and International Court of Justice findings that murders, inhuman acts and cruel treatment were perpetrated against the civilians of Serb ethnicity during and after Operation Storm in 1995, Croatia has had only one final conviction for the war crime of murder committed in that operation. The representative of Croatia never contested my assertion. I also advised that the Croatian Government attempted to deprive Serbia of jurisdiction to investigate and prosecute the crimes perpetrated by Croatian nationals. At the meeting of the General Assembly (see A/70/PV.31) on the 2015 annual report of the ICTY (see A/70/226), I submitted that, in so doing, the Croatian Government sought to establish impunity for its citizens and, for some reason, there has been no reaction from the United Nations. Moreover, the judicial bodies of Croatia and Kosovo have ceased to cooperate in acceding to Serbia's requests for assistance in the meantime.

Notwithstanding this situation, the ICTY Prosecutor has now confirmed in his written report that the Croatian Government established impunity for its citizens. The relevant Croatian agencies have been instructed by decision of the Croatian Government of 3 June 2015

> "not to provide cooperation to foreign judiciaries in certain war crimes cases in which the indictment alleges that members of Croatian civilian and military bodies participated in a joint criminal

enterprise to commit international crimes or that the Croatian military participated in widespread and systematic attacks against civilian populations".

This information is alarming, and Serbia expects the Security Council to react adequately. Otherwise, our efforts will be ineffective, and justice will be denied or remain selective.

Serbia fully understands and shares the Prosecutor's concern about evident regression in regional cooperation and calls once again on the United Nations to find a way for strict and continuous international monitoring in the field. Accountability is a regional issue and national war-crimes prosecutors must cooperate faithfully in fighting impunity without political interference. The Serbian national strategy therefore envisages the convening of a regional conference in which all open issues of regional cooperation would be addressed and resolved.

Serbia also supports the view of the ICTY Prosecutor that the search for missing persons needs to be intensified. Notwithstanding that need, however, mention should also be made in this regard that, according to the official data of the International Commission on Missing Persons, more than 70 per cent of the 40,000 persons who went missing during the armed conflict in the former Yugoslavia have been accounted for. This ratio has not been equalled anywhere in the world, and no small credit for it is due to the efforts made by the country that I come from.

Admittedly, the Prosecutor's report before us is critical of some of Serbia's recent activities. I shall now briefly address that criticism.

An impression has been created, particularly in the region, that Serbia is somehow responsible for the recent acquittal of Vojislav Šešelj. That is not fair. The Serbian Government has been continually requested to fully respect the judgments of the ICTY, especially in the case of the acquittals of General Gotovina and other Croatian generals, despite the factual findings that murders and other serious violations were committed against Serb civilians in Operation Storm. The Serbian Government has also been asked not to comment on the judgments in the cases of Bosnian war commanders Naser Orić and Rasim Delić, whose superior responsibility for crimes of murder and torture in prison camps, including decapitation of Serbian soldiers by mujahideen units, could not be established. However, Naser Orić is now being tried by a Bosnian court on the basis of evidence of individual criminal liability provided by the Serbian War Crimes Prosecutor. We all should be well advised to watch developments in this case.

Respect for ICTY judgments was also requested following the acquittal of Kosovo Liberation Army commanders Ramush Haradinaj and Fatmir Limaj for crimes committed against Serbs. The Judges noted, however, that the Trial Chamber gained "a strong impression that the [Haradinaj] trial was being held in an atmosphere where witnesses felt unsafe". A new light has been shed on the ICTY failure to successfully prosecute the crimes committed by Kosovo and Metohija Albanians by the establishment of a new internationalized judicial mechanism to prosecute those crimes.

Serbia has been criticized also for not electing a new war crimes prosecutor. Indeed, the process of election did fail, but a new recruitment is under way. The election will be one of the priorities of the new Government, expected to be formed soon. In the meantime, the Serbian war crimes prosecution continues to be fully operational under the leadership of the First Deputy Prosecutor and eight indictments for war crimes against 15 individuals have been confirmed in Serbia in 2016.

Now, I will say a few words in explanation of the reported failure by Serbia to execute the warrants of arrest issued by the ICTY Trial Chamber in the case of contempt of court against three individuals. The arrest warrants were issued two months after the provisional release of the accused Vojislav Šešelj, the leader of an opposition political party, under the unprecedented conditions ordered for his stay in Serbia. Government agencies have been ordered to exercise no control over his behaviour and political conduct and, immediately upon his release, Mr. Šešelj began to create difficulties for the Government, in particular with respect to the bilateral relations of the country with its neighbours. The timing of the arrest of his close associates is indicative of the lack of regard for the political and social realities in Serbia.

In that context and acting faithfully upon the ICTY request, my Government made a necessary security analysis and decided that it could not execute the orders at the critical moment because of national security risks. It was of the opinion that there were serious and justifiable reasons to delay execution, especially because the investigation in this case lasted many years.

In such a case, the domestic law on cooperation with the ICTY provides for a possibility to raise an objection to the International Tribunal. On the other hand, the ICTY Rules of Procedure and Evidence provides for no reason to establish a moratorium on ministering the orders of the Tribunal. Therefore, while the Security Council can defer International Criminal Court proceedings for a period of 12 months by a resolution, such a procedural solution does not exist in cases before the ICTY; consequently, the Trial Chamber dismissed the arguments presented by Serbia.

Once again, let me point out that Serbia never asked the Tribunal for a waiver of its international obligations; it asked only for a postponement of an execution while the accused, Šešelj, was on provisional release, under circumstances that endangered the bilateral relations with countries of the region of former Yugoslavia. The postponement of the execution would not set an example; after all, we read in the annals of the Tribunal that Shefqet Kabashi appeared in the courtroom only in 2011, four years after a warrant of arrest for contempt of court had been issued against him in 2007. Meanwhile, the ICTY Presidents did not report to the Security Council the non-cooperation by the United States.

The Serbian Government did not want to protect the accused persons from criminal prosecution. As a compromise solution, a communication was made with the ICTY President to consider the possibility of referring the case to the domestic judiciary proprio motu, in accordance with ICTY Rule 11 bis. In the view of my Government, such a referral would be fully in accordance with resolution 1503 (2003) calling on the ICTY to concentrate on the trial of the most senior leaders suspected of being most responsible for crimes within its jurisdiction and to transfer cases involving those who may not bear that level of responsibility to competent national jurisdictions. On 5 February, however, the ICTY President informed the Serbian Government that contempt matters did not fall within the scope of cases that may be referred to the domestic courts of a State pursuant to 11 bis of the Rules. No particular explanation of such a precedent was provided.

My Government, however, was fully aware of the need to respect ICTY decisions and orders. For that reason, it decided to continue with the domestic case for arrest and transfer of the three accused to the ICTY and, pursuant to the law on cooperation with the ICTY, the Ministry of Justice conveyed the case file to the domestic court for further procedure. Yet, on 18 May, for the first time in the history of Serbia's cooperation, the High Court in Belgrade decided that the legal conditions for the executions of the Tribunal's warrants were not fulfilled in this case, because the law on cooperation stipulates that only the indictment for core statutory crimes, that is, grave breaches of the Geneva Conventions of 1949; violations of the laws or customs of war; genocide and crimes against humanity, provide a legal ground for the execution of ICTY arrest warrants, unlike an indictment for contempt of court.

Perhaps some more light would be shed on the reasoning of the Belgrade High Court if juxtaposed with the explanation given to the Tribunal by the Embassy of France in The Hague in its note verbale no. 1108 of 27 December 2011 in which it is said: "France has no judicial foundation at its disposal that would permit it to act on the request for the arrest of Ms. Florence Hartmann and her transfer to the Tribunal." The difference, though, is in the consequences: unlike on 13 October 2015 in the case of Serbia, President Meron did not report to the Security Council the failure of a Government to cooperate with the ICTY in arresting its citizen. Is it that the principle of the sovereign equality of all Member States assumes a different light once refracted through the prism of the ICTY?

Nevertheless, the decision of the Serbian court in no way precludes Serbia's determination to continue to cooperate with the ICTY in the most active manner so as to enable it to accomplish its mission. We must not be discouraged in our efforts to bring about reconciliation and cooperation and that includes through trying those responsible for crimes in domestic courts. The victims will not be forgotten and we must not allow the crimes to be repeated.

Instead of a conclusion, let me take this opportunity to commend all hardworking officials and the staff of the Tribunal and the Residual Mechanism for the relentless efforts they continue to invest, despite all the challenges. My personal cooperation with many of them over the past 15 years was my highest professional privilege. My thanks are also due to the Security Council for its continued monitoring of this important international issue.

The President (*spoke in French*): I give the floor to the representative of Croatia.

Mr. Drobnjak (Croatia): Allow me to welcome the Presidents of the International Tribunal for the Former Yugoslavia (ICTY) and the International

Residual Mechanism for Criminal Tribunals, Judges Agius and Meron, as well as the esteemed Prosecutor Brammertz. We thank them for today's briefings and reports and commend their continued efforts to ensure accountability for international crimes for which they will continue to have Croatia's full support.

Croatia welcomes the delivery of judgements in the appeal cases of Stanišić and Simatović and the trial case of Radovan Karadžić. Karadžić's rightful conviction, including for the genocide in Srebrenica, must serve future generations as a prime example of the devastating consequences of a genocidal, expansionist policy. Bearing in mind the fact that Karadžić himself participated in four joint criminal enterprises and that during most of the time under consideration he was the President of the Republika Srpska, as well as the Supreme Commander of its armed forces, his sentence does not entirely match the extreme gravity of the crimes committed, nor does it match when compared to some of the sentences given to his subordinates and co-perpetrators acting under his direct command in those crimes. Accordingly, we hope that the Appeals Chamber will carefully reconsider all factual and legal elements of the crimes attributed to Radovan Karadžić and appropriately assess his full responsibility.

On many occasions in this Chamber, we have reiterated the importance of the completion of the remaining ICTY trials. In that vein, we are deeply troubled with the developments in the case of *Goran Hadžić*. Hadžić is charged with 14 counts of crimes against humanity and violations of the laws or customs of war, with the purpose of the permanent forcible removal of Croatians and other non-Serbs in Croatia from a large part of Croatia, envisaged to become part of greater Serbia. Although initially declared fit to stand trial, with an expected verdict to come this fall, Hadžić's trial had been adjourned, and then suspended in 2015. More than a year ago, he was provisionally released due to his health. Regardless of the prosecution's attempts and motions for the continuation of the trial, the proceedings are now stayed indefinitely. And we just learned today that the trial in on the road to being terminated. It is difficult to understand the Trial Chambers' logic in this case after realizing that, during his provisional release, Hadžić had time enough, and seemed to be fit enough, to plan for his second marriage, on which the media repeatedly reported.

Igor Kacić was only 16 years old when, on 20 November 1991, he was taken from the Vukovar hospital and executed, together with 259 other civilians and prisoners. At that time, that was the largest single massacre in Europe since the Second World War. Igor Kacić's body was exhumed from a mass grave in 1996. He still had on him a little dolphin that he carved in a shelter during the three-month siege of his city, as well as a couple of toy cars. His life is lost forever, but we had hoped that at least justice would be served. Therefore, it is with deep regret that we come to realize today that Goran Hadžić, just like his superior and mentor Slobodan Milosević, will never be held accountable for Igor's stolen youth and the extinguished lives of many others.

We are deeply disappointed, dismayed and concerned with the first instance judgment in the *Šešelj* case. On this matter, the President of Croatia, Ms. Kolinda Grabar-Kitarović, wrote to this body to alert it to the judgment and its consequences. The judgment, issued by a majority only a week after the *Karadžić* decision, seems to totally ignore legal and factual findings previously established by the ICTY. We concur with the prosecution's assessment that the Trial Chamber erred both in law and in fact, and expect that the appeal trial will bring long-awaited justice for Seselj's victims. At this point, allow me to quote the dissenting opinion of Judge Lattanzi, who stated that in reading the judgment she felt

> "thrown back in time to a period in human history, centuries ago, when one said [...] *silent enim leges inter arma*".

Today we cannot allow the law to fall silent in times of war and its aftermath.

We remain deeply concerned about Serbia's continued failure to fully cooperate with the Tribunal and execute the Tribunal's arrest warrants for three Serbian indictees. We call again upon our neighbour to comply with the Tribunal's requests without any further delay, and we remind it that full cooperation with the ICTY is an international obligation and an essential political condition — as part of political criteria for the countries of the Stabilization and Association Process — and legal condition — as part of the Stabilization and Association Agreement between Serbia and the European Union — throughout the accession process of Serbia to the European Union.

Croatia also shares the grave concerns of the Office of the Prosecutor about the participation of Tribunal-convicted war criminals in election campaigns

during the reporting period, where convicted persons appeared at campaign events for Serbian political parties or on public television. As recently as 9 May, Veselin Sljivancanin, the war criminal convicted for the Vukovar hospital massacre, was a guest at the official military parade commemorating Serbian armed forces and, paradoxically, the liberation of Europe. It is a gruesome predicament that it was precisely Sljivancanin who in 1991 pointed out Igor Kacić, the boy with the little dolphin, separated him from his mother and sent him to a horrific death together with hundreds of others.

Convicted war criminals have no place on ceremonial stages or in public life. They belong on the margins of society and civilization as an example and eternal reminder of failed policies that led to unspeakable atrocities. We have to prevent the demons of the past and their toxic ideology from shaping our present or our future. Generations to come and history will be unforgiving of our failure to do so. Croatia stands ready to cooperate with its neighbours and assist them in overcoming the remaining obstacles in facing the past as a precondition for lasting peace and meaningful reconciliation.

I will repeat what I have stated on previous occasions in the context of prolonged proceedings by expressing our hope that in the case of *Prlić et al.*, the Tribunal will find ways not to prolong this complex case, keeping in mind the targeted completion strategy.

With their contribution to international criminal justice, the ICTY and the Mechanism, albeit being temporal institutions, will undoubtedly leave behind a permanent legacy. Their work is not over, as thousands of victims and their loved ones are still waiting for justice to be served and historical truth to be established. On our part, we will continue to render our support and assistance to them in completing their work.

Finally, the fact that I will not comment in any way on Serbia's comments today in no way implies that Croatia agrees with them.

The President (*spoke in French*): I now give the floor to the representative of Bosnia and Herzegovina.

Mr. Vukašinović (Bosnia and Herzegovina): We also thank the leadership of the ICTY and the International Residual Mechanism for Criminal Tribunals for their respective reports and today's detailed briefing on the progress of legal proceedings, completion strategy implementation and the transfer of the Tribunal's functions to the Mechanism. We also take note of the report (S/2016/441) of the Office of Internal Oversight Services and the observations and recommendations contained therein.

The achievements of the International Criminal Tribunals have been an invaluable contribution to the development of international criminal law and justice in the past two decades. They stood at the forefront of the fight against impunity, bringing to justice many of those responsible for serious crimes against humanity and playing a crucial role in promoting the rule of law at both the international and national levels. Their legacy is important for the future of international criminal justice.

With the Mechanism having taken over all of the remaining functions of the International Criminal Tribunal for Rwanda as of 1 January, and a date foreseen for the closure of the International Criminal Tribunal for the Former Yugoslvia (ICTY) now in 2017, we are mindful that the important work of the ICTY is yet to be completed. We encourage the Tribunal to complete its work expeditiously by the targeted date. We acknowledge the judges' efforts in identifying further measures to expedite the pending cases, as well as overall efforts to ensure the smooth transfer of functions to the Residual Mechanism in accordance with resolution 1966 (2010).

Bosnia and Herzegovina remains dedicated to the fight against impunity. Our full and steady cooperation with the ICTY throughout the years reflects that dedication and will continue with the Mechanism. We are pleased to see that the Mechanism is in full command of its designated operations. We trust that it will continue to effectively carry out its work. Fighting impunity at the domestic level is a prerequisite for achieving national reconciliation and long-term stability in a country and the region. The completion of the ICTY mandate does not mean the end of the fight against impunity in my country. We remain committed to strengthening the national justice system at all levels in order to bring to justice persons responsible for atrocity crimes. Our national war crimes strategy has improved the consistency of judicial practices throughout the entire country at all levels, thereby ensuring the protection and support of victims and witnesses.

The implementation of a national strategy for processing war crimes, regardless of the national or

religious origin of the perpetrators and victims, is of crucial importance to a complex, multinational State. During the reporting period, efficiency in war crimes cases prosecutions at all levels steadily increased and, as noted in the Prosecutor's assessments, further progress has been made by the Prosecutor's Office of Bosnia and Herzegovina in resolving outstanding category 2 cases and in issuing important indictments. However, as of 1 January there are 335 cases pending in the Prosecutor's Office of Bosnia and Herzegovina.

The implementation of the national war crimes strategy has also played an important role in post-conflict reconciliation in Bosnia and Herzegovina. We welcome the support of the European Union in the implementation of the strategy and the support of the Organization for Security and Cooperation in Europe and the United Nations Development Programme, particularly in connection with witness protection activities and providing appropriate assistance and support to victims. In September 2015, the Council of Ministers of Bosnia and Herzegovina adopted a justice sector reform strategy for the period 2014 to 2018. The strategy will contribute to the long-term reinforcement of the rule of law and further consolidate the judicial system, including measures to improve judicial independence and efficiency.

As noted by the ICTY Prosecutor, regional cooperation has significantly advanced over the past decade through the dedicated efforts of judicial officials, but more political will and support is now needed to make accountability a regional issue and advance solutions to current challenges. Bosnia and Herzegovina remains committed to the promotion of stronger and more coordinated regional cooperation, and the best possible continuation of the work of the Tribunal and preservation of its legacy. In our joint efforts in delivering justice for numerous victims of our region lies the true strength of reconciliation.

The successful completion of the Tribunals' mandates will mark the end of one historic chapter, changing the landscape of international criminal justice forever. But our work in fighting impunity does not stop there; we must reconfirm our strongest commitment to accountability and the advancement of justice, and deliver on that commitment without selectivity or hesitation. That is the best possible tribute to the groundbreaking achievements of those two institutions.

The meeting rose at 1 p.m.

United Nations S/PV.7708

Security Council

Seventy-first year

Provisional

7708th meeting
Wednesday, 8 June 2016, 3 p.m.
New York

President:	Mr. Delattre	(France)
Members:	Angola	Mr. Lucas
	China	Mr. Xu Zhongsheng
	Egypt	Mr. Aboulatta
	Japan	Mr. Okamura
	Malaysia	Mrs. Adnin
	New Zealand	Mrs. Schwalger
	Russian Federation	Mr. Churkin
	Senegal	Mr. Ciss
	Spain	Mr. González de Linares Palou
	Ukraine	Mr. Yelchenko
	United Kingdom of Great Britain and Northern Ireland	Mr. Wilson
	United States of America	Ms. Sison
	Uruguay	Mr. Rivas
	Venezuela (Bolivarian Republic of)	Mr. Suárez Moreno

Agenda

Threats to international peace and security caused by terrorist acts

Report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat (S/2016/501)

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The meeting was called to order at 3 p.m.

Adoption of the agenda

The agenda was adopted.

Threats to international peace and security caused by terrorist acts

Report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat (S/2016/501)

The President (*spoke in French*): In accordance with rule 39 of the Council's provisional rules of procedure, I invite Mr. Jeffrey Feltman, Under-Secretary-General for Political Affairs, to participate in this meeting.

The Security Council will now begin its consideration of the item on its agenda.

I wish to draw the attention of Council members to document S/2016/501, which contains the report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat.

I now give the floor to Mr. Feltman.

Mr. Feltman: I thank you, Sir, for this opportunity to brief the Security Council on the second report (S/2016/501) of the Secretary-General on the threat posed by the Islamic State in Iraq and the Levant (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat. The report is submitted pursuant to paragraph 97 of resolution 2253 (2015), which requested the Secretary-General to submit an initial strategic-level report, followed by updates every four months, that demonstrate and reflect the gravity of the threat that the Islamic State in Iraq and the Levant (ISIL) represents to the international community and the principles and values of the Charter of the United Nations.

The Secretary-General's initial report (S/2016/92), published on 29 January, addressed the areas identified by the Council, including the risks posed by foreign terrorist fighters and ISIL's funding sources, and contained recommendations for strengthening the capacities of Member States to mitigate the threat posed by ISIL, as well as ways by which the United Nations could support those efforts.

This update report provides an updated assessment on the gravity of the threat posed by ISIL and associated groups and entities, their funding sources and geographic and thematic trends of the threat. It also highlights Member States and United Nations efforts and progress in implementing related counter-terrorism measures.

The report was prepared with the input of the Counter-Terrorism Committee Executive Directorate, the contribution of the Analytical Support and Sanctions Monitoring Team of the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015), concerning the Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities, and in close collaboration with the Counter-Terrorism Implementation Task Force (CTITF), the United Nations Counter-Terrorism Centre (UNCCT) and other relevant United Nations actors and international organizations.

The report stresses that the threat posed by ISIL and its associates remains high and continues to diversify. ISIL's military setbacks in Iraq and the Syrian Arab Republic could be one of the factors behind the marked increase in the rate of return of foreign terrorist fighters. However ISIL is yet to be strategically or irreversibly weakened. The inflow of arms and ammunition, directly or indirectly, into ISIL-held territory remains a serious concern.

Given its recent military setbacks, ISIL may be moving into a new phase — elevating the role of its affiliates, trying to move funds outside the current zones of conflict and increasing the risk of complex, multi-wave and international attacks. The bombings and shootings in Paris in November 2015, and in Brussels in March, demonstrate the important role that returned terrorist fighters can play in coordinating terrorist operations.

The report also notes that, for the first time since the declaration of its so-called caliphate, in June 2014, the ISIL core is under financial pressure. ISIL is trying to compensate for the loss in oil revenues, mostly due to international air strikes, by intensifying efforts in taxation and extortion. It is not clear how much revenue ISIL earns from antiquities smuggling, which now

also may be from Libya and Yemen, but that practice remains a source of income as well.

The report emphasizes that, in that context, ISIL may attempt to exploit additional revenue-generating activities, such as the kidnapping of international hostages, to move funds internationally, through informal and formal channels, and to convert local currency into currency or commodities, such as gold, that can be more easily transferred internationally. ISIL's provision of funds to its affiliates and networks also represents a major concern.

Significant numbers of foreign terrorist fighters continue to travel to join ISIL in the Syrian Arab Republic and Iraq from States around the world, often using so-called broken travel techniques and false or stolen travel documents. In terms of current trends, the report notes the risks that returned foreign terrorist fighters represent for regions such as South-East Asia and countries such as Libya.

The report also highlights evolving aspects of the threat posed by ISIL.

First, in Libya, the terrorist group has gained control over territory in a relatively short time. Despite ISIL's difficulties in consolidating gains, building alliances and competing with other actors, Libya risks becoming a hub for ISIL's expansion in the wider Maghreb and Sahel region and beyond.

Secondly, in Afghanistan, despite some military setbacks in 2015 and 2016, ISIL has proved its ability to hold limited terrain and to conduct terrorist attacks in cities beyond its core territory.

Thirdly, information and communications technologies continue to be a key enabler for ISIL and its affiliates and to play an essential role in helping these groups function, recruit, gather supplies and attack.

Fourthly, sexual violence continues to be used as a tactic of terrorism to increase ISIL's power, revenue and recruitment base, as well as to shred the social fabric of targeted communities.

The report also highlights the efforts and progress of Member States and the United Nations in implementing related counter-terrorism measures in a number of thematic areas.

Since the Secretary-General's initial report on the threat posed by ISIL, Member States have continued to update their legislation in response to resolution 2178 (2014); strengthened their capacities to effectively investigate and prosecute complex terrorism-related cases; sought to identify barriers to the sharing of financial information; worked on designing and implementing comprehensive border-management strategies; and paid increased attention to the development of comprehensive approaches to countering recruitment and preventing and countering violent extremism, among other areas.

During the same period, the United Nations Counter-Terrorism Implementation Task Force finalized the Security Council-mandated capacity-building implementation plan for countering the flow of foreign terrorist fighters. The implementation plan includes 37 mutually reinforcing project proposals submitted by 12 CTITF entities, prioritized by the Counter-Terrorism Committee Executive Directorate geographically and thematically. The plan addresses the entire life cycle of the phenomenon of foreign terrorist fighters, from their radicalization to travel, operationalization, fighting, reintegration and rehabilitation. The total budget of the entire project is $100 million to $120 million over three to five years. To date, we have identified approximately 10 per cent of the needed funding from donors and commenced a number of the projects included in the plan, including on advanced passenger information.

To implement all the projects and help Member States make an impact on the foreign terrorist fighter phenomenon, further funding will be required. To that end, the Council will recall that in S/PRST/2015/11, the Security Council encouraged

> "[m]ember States to provide needed financial and other assistance to CTITF and the UNCCT".

Since January, CTITF entities have also implemented specialized capacity-building programmes to counter the financing of terrorism, strengthen border controls and implement advanced passenger information systems; developed a counter-terrorism prosecutors' network; launched an innovative project on private-sector engagement in responding to terrorists' use of information and communications technologies; and organized a major international conference with our Swiss partners in Geneva on preventing violent extremism.

In the field, the United Nations Support Mission in Libya (UNSMIL) has prepared assessment reports on ISIL that it shares with Member States to support their efforts to counter the threat of ISIL. UNSMIL

has continued to support the efforts of the Presidency Council in leading Libya's transition and the establishment of the Government of national accord to curtail further expansion of ISIL.

Despite the efforts of the international community, including the United Nations, to counter ISIL, and despite ISIL's military setbacks in Iraq and the Syrian Arab Republic and its financial pressures, ISIL continues to pose a significant challenge to international peace and security.

In the face of this common threat, I would like to reiterate the Secretary-General's call to unity and action, including in finding political solutions to the conflict in Syria, and to assure the Council that the United Nations will continue to support Member States in implementing the relevant resolutions of the Security Council and the General Assembly.

The Secretary-General will provide an update of this report to the Council in four months' time, as mandated by resolution 2253 (2015).

The President (*spoke in French*): I thank Mr. Feltman for his briefing.

The representative of the Russian Federation has asked for the floor to make a statement.

Mr. Churkin (Russian Federation) (*spoke in Russian*): First of all, I should like to underscore the importance of the full implementation of resolution 2253 (2015) in order to combat the Islamic State in Iraq and the Levant (ISIL), Al-Qaida and associated groups such as Jabhat Al-Nusra.

Strategic reports of the Secretary-General to implement this resolution are meant to shape an objective understanding of the terrorist threat and assess the contributions of Member States in combating this global threat. Unfortunately, the current report of the Secretary-General (S/2015/501) not meet this goal. Furthermore, the document is based on one-sided data and therefore does not give a true picture of the situation. For example, in paragraph 4 of the report, it is stated that ISIL's military setbacks are directly linked to some efforts of the international coalition forces. The impression one gets is that the report specifically highlights the role of the coalition led by the United States, whereas the efforts of other States, which are often more effective, are intentionally ignored. This kind of philosophy is fundamentally wrong, as it does not contribute to the shaping of the global anti-terrorist coalition whose establishment President Putin of Russia has called for during the seventieth session of the General Assembly.

It is important to note that significant damage to capacity of ISIL was inflicted by the Russian air force. We deem it unacceptable to say nothing about that or about the efforts of the Syrian armed forces, which selflessly are on the front lines of the fight against the terrorist threat. It is difficult to understand that the report says nothing about the role of the Russian air force or the important expulsion of terrorists from Palmyra and the restoration, with the help of the Russian armed forces and experts, of peaceful conditions there, including the demining of that historic citadel.

We would also like to ask the authors of the report why it does not reflect the data that was provided on the results of the efforts of the Russian air force in Syria, including lists of eliminated terrorist leaders, which were specifically requested from us by the monitoring group of the anti-terrorist sanctions committees. What then was the purpose of asking for this information?

In this connection, we think that it is very important to convey to the Members of the United Nations an objective picture of the Russian anti-terrorist operation in Syria. We are convinced that its effectiveness is based on the fact that we are acting with the legitimate consent of the Syrian Government. As a result of the efforts of the Russian air force in Syria, this operation was a turning point in destroying the resource base of the terrorists. We destroyed thousands of support facilities with stockpiles of ammunition and military equipment, material resources, oil and fuel supplies and explosives. We destroyed more than 200 oil production, transit and refining facilities, as well as more than 2,000 transport modalities used to smuggle oil to Turkey. The most recent example was the destruction, just several days ago, of four sites for the illegal production of oil located in the Raqqa and Homs provinces, which are controlled by ISIL fighters.

We would like to underscore that without the consolidation of efforts in combating terrorism, the threat will remain significant. The situation in Syria remains a source of considerable concern. What is important is to quickly separate Jabhat Al-Nusra from the Syrian opposition. It is essential for those who are fighting in Syria to clearly state whether they are with the terrorists or against them. We should not

delay this process, because by delaying it we are only strengthening terrorist groups.

As a consequence, Jabhat Al-Nusra, Ahrar Al-Sham, Jaish Al-Islam and Jaish Al-Fatah have practically become connected structures, and some entities have violated the ceasefire regime. These kinds of threatening developments are occurring due to external interference by forces that are trying to undermine Russian-American cooperation. As a result, the Syrian armed forces are combating large-scale offensives on the part of the jihadists, who are moving across the Syrian-Turkish border. A clear illustration is the situation in Aleppo, where terrorists are continuing, with external support, to seize new territories. The Kurdish neighbourhood of Sheikh Maqsoud has been the target of daily artillery shelling by Al-Nusra. We have found that Al-Nusra are being helped by other armed groups that are considered moderate. As a result of double standard politics, Al-Nusra thinks it can act without any consequences and is now deploying its forces in civilian neighbourhoods and using civilians as human shield.

For several months, we have been assured that the link between the terrorists and the moderate opposition would be broken. But we are not seeing any results. Consequently, violent confrontation continues to increase, while the terrorist threat, as the events of the past year have shown, continues to intensify and to extend far beyond the Syrian border.

Ending external support for terrorists requires an immediate solution. The Syrian-Turkish border needs to be closed immediately. In addition to what I said earlier, border crossings, which the international community designated for humanitarian deliveries, are often being used for criminal ends. There is irrefutable documentary evidence of that process taking place in the border districts, but that proof is being disregarded. In that regard, we also continue to be surprised by the inexplicable lack of action on the part of some of our international partners.

One is amazed at the ongoing disregard for Turkey's role in the financing of, and the provision of resources and recruits for, terrorist operations in Syria. The report has been scrubbed of even indirect links to information provided by Russian on the financing of ISIL.

The regular flow of information about supplies from Turkish territory into Syria of components for the production of chemical weapons for the needs of terrorists requires particular attention. Unfortunately, that issue is persistently hushed up, and a corresponding Russian initiative to strengthen the fight against the threat of chemical terrorism is being slowed down for no apparent reason.

Another example is the information we have provided to the Security Council on supplies to ISIL of components for the production of improvised explosive devices (IED). Our analysis had shown that those substances were produced in Turkey and were provided to Syria. Our analysis of the IED components found in Syria and Iraq shows that they were either manufactured in Turkey or delivered to that country without the right of re-export.

Once again, it behooves us to pay particular attention to actions by Turkey and to such disturbing elements in its regional policy as its unauthorized intrusion on the territory of Syria and Iraq. There are reports that Turkey is building extended concrete walls on Syrian territory close to its borders. We request the Secretariat to find out about that and to report back to the Council.

As before, we believe that resolution 2253 (2015) includes a very important list of measures to strengthen the regime and put an end to the illegal supplies being channeled to ISIL and groups related to it, as well as to strengthen the United Nations monitoring and sanctions regime. As we see it, currently, the goal is to further strengthen that very important resolution. An objective, balanced and fair report of the Secretary-General, pursuant to that resolution, would be a very important contribution to that cause.

The President (*spoke in French*): I now invite Council members to informal consultations to continue our discussion on the subject.

The meeting rose at 3.20 p.m.

United Nations S/PV.7709

Security Council

Distr.: General
9 June 2016

Original: English

Official communiqué of the 7709th (closed) meeting of the Security Council

Held in private at Headquarters, New York, on Thursday, 9 June 2016, at 10 a.m.

In accordance with rule 55 of the provisional rules of procedure of the Security Council, the following communiqué was issued through the Secretary-General in place of a verbatim record:

"On 9 June 2016, the Security Council, pursuant to annex II, sections A and B of resolution 1353 (2001), held its 7709th meeting in private with the troop- and police-contributing countries to the African Union-United Nations Hybrid Operation in Darfur.

"The President invited Mr. El-Ghassim Wane, Assistant Secretary-General for Peacekeeping Operations, to participate in the meeting in accordance with rule 39 of the Council's provisional rules of procedure.

"The Security Council and the troop- and police-contributing countries heard a briefing by Mr. Wane.

"Members of the Council, Mr. Wane and representatives of participating contributing countries had an exchange of views."

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United Nations S/PV.7710

Security Council

Seventy-first year

Provisional

7710th meeting
Thursday, 9 June 2016, 11 a.m.
New York

President:	Mr. Lamek	(France)
Members:	Angola	Mr. Gimolieca
	China	Mr. Shea Bo
	Egypt	Mr. Aboulatta
	Japan	Mr. Okamura
	Malaysia	Mr. Ibrahim
	New Zealand	Mr. Taula
	Russian Federation	Mr. Zagaynov
	Senegal	Mr. Ciss
	Spain	Mr. Oyarzun Marchesi
	Ukraine	Mr. Vitrenko
	United Kingdom of Great Britain and Northern Ireland	Ms. Sornarajah
	United States of America	Mr. Pressman
	Uruguay	Mr. Bermúdez
	Venezuela (Bolivarian Republic of)	Mr. Méndez Graterol

Agenda

Reports of the Secretary-General on the Sudan and South Sudan

This record contains the text of speeches delivered in English and of the translation of speeches delivered in other languages. The final text will be printed in the *Official Records of the Security Council. Corrections* should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room U-0506 (verbatimrecords@un.org). Corrected records will be reissued electronically on the Official Document System of the United Nations (http://documents.un.org).

16-16501 (E)

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The meeting was called to order at 11.05 a.m.

Adoption of the agenda

The agenda was adopted.

Reports of the Secretary-General on the Sudan and South Sudan

The President (*spoke in French*): In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representative of the Sudan to participate in this meeting.

In accordance with rule 39 of the Council's provisional rules of procedure, I invite Ms. Fatou Bensouda, Prosecutor of the International Criminal Court, to participate in this meeting.

The Security Council will now begin its consideration the item on its agenda.

I give the floor to Ms. Bensouda.

Ms. Bensouda: I thank you, Sir, for the opportunity to once again engage with the Council on the occasion of my Office's twenty-third report on the Darfur situation.

It has been more than a decade since the Security Council, through resolution 1593 (2005), referred the situation in Darfur to my Office. Resolution 1593 (2005) served as a message of hope for the victims of Darfur subjected to grave crimes under the Rome Statute that they would finally see accountability and justice for their suffering.

Today, those victims' quest for justice is as far from being realized as it was 11 years ago. More worrying still, grave crimes continue to be committed in Darfur, resulting in further victimization and suffering. This reality is to be lamented by all people of good conscience. Over the years since the adoption of resolution 1593 (2005), my Office's message to this body regarding the Sudan's flagrant disregard of the Council's resolutions has been principled, consistent and clear. Sadly, my Office's countless appeals to the Council for action to address the persistent failure of the Sudan to comply with its international obligations have not been heeded. I respectfully note that, regrettably, the Council has been equally consistent in its conspicuous silence over the Sudan's non-compliance with its own resolutions.

This inaction on the part of the Council has had adverse consequences. First, it has emboldened Mr. Al-Bashir to continue travelling across international borders, despite the fact that two arrest warrants have been issued against him by the Court. Secondly, the Council's failure to act in response to 11 findings of non-compliance issued by International Criminal Court (ICC) judges has equally emboldened States, parties as well ascertain non-parties to the Rome Statute, not only to facilitate Mr. Al-Bashir's travels to their territories but to invite and host him. A reasonable observer cannot be faulted for asking how many more such findings must be rendered by the Court to spur this Council into action. The victims' groups with which I will be meeting later today will surely and, indeed, rightly, have such questions on their minds.

This evolving trend risks setting an ominous precedent that, unless it sees redirection, will not bode well for similar genuine efforts aimed at bringing those responsible for mass atrocities to justice. What message are we sending to would-be perpetrators if those against whom international warrants have been issued for the world's most egregious crimes can travel freely, and without any repercussions for those who facilitate or, worse, keep suspects of atrocity crimes as company. Above all, such non-feasance has emboldened some States to publicly express pride in disregarding the Council's authority. This trend of non-compliance with resolutions under Chapter VII of the Charter of the United Nations continues to exacerbate victims' frustrations and should be a matter of great concern to us all. It should therefore be particularly concerning that violations of a Chapter VII resolution have become routine without any resulting condemnation or appropriate action by the Council. With your indulgence, Sir, I would like to place the accent on several important observations in this regard.

First, it is imperative for the Council to fully appreciate and embrace its inter-institutional relationship with the International Criminal Court within the framework of the Rome Statute, and in full respect for the respective independence of these important institutions. More specifically, the Council must recognize that once a ruling of non-compliance has been referred to it pursuant to article 87.7 of the Rome Statute, it is dutybound to act to give due consideration to the judicial ruling and to take decisive action as appropriate. To do otherwise would not only deprive article 87.7 of the Statute of its object and purpose and frustrate the ends of justice, but also erode public confidence in the Council. The Council cannot and must not remain silent and non-responsive on such

judicial findings, which are, after all, inherently linked to the resolution referring the situation of Darfur to my Office.

I invite and encourage Council members to give due consideration to the constructive proposal submitted by New Zealand, calling for a structured approach in dealing with the Court's findings of State non-compliance. A formula that has in the past proved useful for meaningful exchange of ideas is the informal interactive dialogue between my Office and the Council. To be sure, increased interaction between my Office and the Council will enable us to jointly reflect and generate proposals on strengthening our existing inter-institutional relationship in a manner that results in more effective outcomes. This is the least we can do to reassure the victims of Darfur that they have not been forgotten, and that both the Council and my Office are fully engaged in and committed to finding solutions that will ultimately ensure accountability and by extension bring peace and stability to Darfur.

My second broad observation relates to the obligations of states and cooperation. Quoting from the International Court of Justice's advisory opinion on Namibia, the Pre-Trial Chamber of the ICC noted in an instance of non-compliance with Mr Al-Bashir's arrest that

> "[w]hen the Security Council adopts a decision under article 25 in accordance with the Charter, it is for member States to comply with that decision ... To hold otherwise would be to deprive this principal organ of its essential functions and powers under the Charter."

The Pre-Trial Chamber in the same decision further emphasized the critical role of the Council in enforcing compliance with resolutions adopted under Chapter VII of the Charter of the United Nations. To be clear, the Sudan's failure to cooperate with the Court amounts to non-compliance — not least, it is in breach of resolution 1593 (2005). That resolution has in effect brought the Sudan under the full breadth and ambit of the Rome Statute legal framework.

Regarding non-State parties, when they fail to cooperate in the arrest and surrender of suspects against whom warrants of arrest have been issued by the Court in the Darfur situation, they do so with complete disregard for resolution 1593 (2005), which urges them to do the contrary — that is, to fully cooperate with the Court. As it concerns Rome Statute States parties, a failure to arrest and surrender would constitute not only a violation of resolution 1593 (2005), but a breach of their Rome Statute obligations — indeed, their treaty obligations. In either case, these breaches undermine the cause of international criminal justice and are a direct attack on the credibility of the Council, which referred the situation in Darfur to my Office.

Despite these challenges, my Office is continuing its investigations with a view to delivering justice to the victims of grave crimes under the Rome Statute in Darfur. A list of obstacles complicates our work. A lack of access to the territory of the Sudan, resource constraints and non-execution of the long-outstanding arrest warrants have all contributed to the slow progress in investigations.

Nevertheless, my Office's strong belief that justice and accountability are key to lasting peace in Darfur continues to motivate us to exert every effort within the means and abilities at our disposal to advance the investigations as effectively as possible. Leads that have the potential to yield additional evidence continue to be followed even as the modest Darfur team of my Office divides its time and energies between the Darfur dossier and other cases that are equally demanding. Despite these difficulties, we will not falter. Our commitment to the victims of the crimes under the Rome Statute in Darfur and elsewhere is what inspires us and propels my Office forward to overcome challenges and to ultimately obtain the desired results. We are unbending in this commitment.

My Office shares the Council's expression of deep concern in its resolution 2265 (2016) at the increased violence and insecurity in Darfur, the significant increase in the number of persons who have been internally displaced since 2014, and the restriction of humanitarian access to conflict areas where vulnerable civilian populations reside. I am concerned about a significant increase in aerial bombardments and ground attacks, resulting in over 400 civilian deaths and up to 200 villages destroyed as reported. In addition, 107 incidents of sexual crimes against women were reported, resulting in 225 victims. Seventy per cent of these alleged incidents involved gang-rape, and 19 per cent involved girls under the age of 18 years. Troops aligned with the Government of the Sudan and unidentified assailants are the main alleged perpetrators.

Over 129,000 people have been displaced from Jebel Marra since mid-January. There might be

thousands more displaced, hidden in the mountains of Jebel Marra, but as the Council is undoubtedly aware, the United Nations and humanitarian organizations have no access to those areas. There were five reported incidents of attacks on humanitarian aid workers and peacekeepers, with one peacekeeper killed, in this reporting period.

In relation to allegations of ongoing crimes, my Office is concerned over reports of the activities of the Government of the Sudan's Rapid Support Forces (RSF). The RSF were allegedly again involved in the commission of crimes during the reporting period. In one such attack in Central Darfur between 30 December 2015 and 1 January 2016, the Sudanese Armed Forces, RSF and Janjaweed attacked villages in East Jebel Marra. The attack was supported by air raids and artillery fire. Between four and six civilians, including two children, were allegedly killed during the ground attack. In another attack on 21 January, aerial bombardments reportedly killed 48 women and destroyed six houses.

As mentioned in my latest report, my Office notes that the modus operandi of the attacks employed by the Government of the Sudan is similar to the manner in which the attacks were carried out in 2003 and 2004. The continuation of the Government of the Sudan's military attacks in Darfur in that manner must be halted. In our assessment, the arrest and surrender of Mr. Al-Bashir and other accused in the situation in Darfur may assist in stopping those crimes.

In conclusion, the Security Council must no longer tolerate the continuing deteriorating humanitarian situation in Darfur, the continuing non-cooperation of the Government of the Sudan and, in particular, the refusal of the Sudan to arrest and surrender suspects within its territory to the custody of the Court. It is within the powers of the Council to reverse those trends through concrete action and resolve. Meaningful follow-up in response to the Court's findings of non-compliance is one concrete step that the Council can take to project its commitment to the victims of Darfur and to accountability as indispensable and indivisible component of peace and security. Again, I urge the Council to give serious consideration to the proposal made by New Zealand for a structured approach to dealing with the Court's findings of non-compliance referred to the Council.

To be sure, without stronger and committed action by the Council and State parties, the situation in the Sudan is unlikely to improve, the alleged perpetrators of serious crimes against the civilian population will not be brought to justice and the prospects for a lingering conflict will become more acute. Justice and accountability for the grave crimes under the Rome Statute must not be sacrificed at the altar of political expediency. The maintenance of international peace and security and the cause of international criminal justice are intrinsically linked. Indeed, the former is in many ways contingent upon the latter.

The President (*spoke in French*): I thank Prosecutor Bensouda for her briefing.

I shall now give the floor to the members of the Council.

Mr. Zagaynov (Russian Federation) (*spoke in Russian*): In recent weeks, we have repeatedly voiced at the Security Council and at the General Assembly our assessment of the activities of International Criminal Court (ICC). They largely have to do with the Darfur investigation.

We have taken note of the twenty-third report of the Prosecutor of the International Criminal Court on the investigation into the situation in Darfur. We were surprised at the tone used by the Prosecutor in addressing demands to the Security Council for so-called follow-up to the referral of the situation in Darfur. We expect from the ICC Prosecutor detailed reporting on her work, rather than some sort of assessment of the activities of the Security Council, its authority and positions. We consider it inappropriate to attempt to bring influence to bear on the Council. All this ones again makes one wonder about the point of this kind of dialogue between the Security Council and the ICC.

It should be noted that there is no consensus, even among State parties to the Rome Statute, when it comes to implementing certain arrests warrants issued by the ICC. In a number of cases, the African Union and its members have pointed to contradictions between ICC requirements and their own obligations under international law concerning the immunity senior State officials. We understand the position of African countries on the issue of the ICC. We think it is justified. Unfortunately, as has been demonstrated in practice in recent years, not all members of the Council are ready to heed that position. Our delegation was interested in the initiative to establish a special ministerial committee of the African Union to address the concerns of African

countries with regard to the ICC. We also supported the idea of convening a dialogue between the Security Council and representatives of such a committee. We hope there will soon be such a meeting in New York.

We would like to comment on some facts and figures included in the Prosecutor's report. We call attention to unverified information about the number of civilian victims and displaced persons in Darfur. Those findings have not been corroborated by the Office for the Coordination of Humanitarian Affairs (OCHA). The report essentially relays to the Security Council assertions from Radio Dabanga. Based in The Hague, the station is known, among other things, for blatantly spreading misinformation and for its connections with the Sudanese armed opposition. As it is known, there is currently an operation under way in Darfur against the Sudan Liberation Army. That group stubbornly refuses to engage in negotiations with Khartoum. Those insurgents have rejected the moratorium on military operations and have attacked both Government forces and civilian targets and civilians themselves. The militias in Darfur have also adopted a destructive position. In particular, they have refused to sign the African Union road map — a peace plan backed by the Secretary-General and the Chair of the African Union Commission.

Experts of the Security Council sanctions committee on the Sudan have confirmed violations of international humanitarian law by Sudanese rebels, including the recruitment of child soldiers. In the report of the Prosecutor information about that and other wrongdoing by the insurgents undermining peace and security in Darfur is conspicuously absent. Such a one-sided assessment by the ICC against the legitimate Government of the Sudan is unlikely to add credibility to impartiality of the ICC.

Finally, speaking not only about the Darfur investigation but more broadly, we would like once again to emphasize the importance of striking a balance between the interests of serving justice and those of achieving lasting peace and stabilizing the situation. Those tasks are of equal importance and require a comprehensive and balanced approach.

Ms. Sornarajah (United Kingdom): Let me begin by thanking Prosecutor Bensouda for her twenty-third report and for briefing us today on the activities of her Office concerning the situation in Darfur.

Like others here, the United Kingdom is deeply concerned about the increased violence in Darfur this year, in particular in Jebel Marra, as the Prosecutor set out, where as many as 130,000 people have just been displaced. We continue to hear reports of forced displacement, restrictions on humanitarian aid, and attacks on civilians by the Rapid Support Forces and other militias. That cannot continue. It is clear that a lasting peace agreement is long overdue. We urge all parties to engage with the African Union High-level Implementation Panel road map as a viable way forward.

We are especially concerned to hear of widespread allegations of intercommunal clashes and serious sexual violence and gender-based crimes plaguing large parts of Darfur. Our concern is only heightened by the culture of impunity that prevails in the region. All forms of sexual and gender-based violence are utterly unacceptable. Crimes such as those are one of the many reasons that the United Kingdom continues to support the Preventing Sexual Violence in Conflict Initiative. Justice must be delivered to survivors, and the International Criminal Court (ICC) has an important role to play in doing so. We call on all parties to end the violence against civilians and the abuses and violations of human rights and international humanitarian law.

The United Kingdom is frustrated that fugitives from the Court continue to travel with impunity. This reporting period has actually seen an increase in travel. We are particularly disappointed that President Al-Bashir was able to travel to, and be hosted by, State parties. Together with our international partners, we have raised our concerns with the relevant Governments. I hope that other members of the Security Council will do so too. As the Prosecutor is aware, the United Kingdom is a strong supporter of the International Criminal Court. We continue to make clear that we expect compliance with its arrest warrants for all those indicted, including President Al-Bashir, and we remind the relevant countries of their legal obligations as well.

The Government of the Sudan has persistently failed to meet its obligations under resolution 1593 (2005). In doing so, it weakens the rules-based international system. We call upon the Government of the Sudan, as we all countries, to cooperate fully with the ICC so that justice can be delivered, perpetrators can be held to account and impunity can be ended.

In the light of all of these obstructions and difficulties, the Prosecutor should be congratulated

on the progress her Office has made to advance its investigations, including by gathering new documentary evidence and interviewing witnesses. We understand the resource constraints that the Court is under but nevertheless urge her to continue in its essential work.

We call on all ICC States parties to meet their obligations under the Rome Statute, all States to respect resolution 1593 (2005), and the Government of the Sudan to cooperate fully with the ICC. Having referred the situation in Darfur to the Court, the Council must support the Court in fulfilling that mandate and take effective follow-up action in relation to non-cooperation with the Court.

In conclusion, the United Kingdom believes that achieving justice for victims should be at the heart of the international community's response to mass atrocity violence. It is vital that fugitives from international justice not enjoy impunity. Only yesterday, many here noted the fact that the International Tribunal for the Former Yugoslavia had brought accountability to the victims of Radovan Karadžić more than 20 years after the end of that conflict. In doing so, they have shown that justice has no expiration date and that justice can be achieved when an international tribunal is supported in fulfilling its mandate.

Let me close by reiterating the United Kingdom's commitment to the ICC. I call on others to do the same.

Mr. Ciss (Senegal) (*spoke in French*): I should first like to thank you, Mr. President, for having organized this briefing today and to welcome the Prosecutor, Ms. Fatou Bensouda, and thank her for her report and her briefing on the status of the investigations and procedures led by her Office in Darfur pursuant to resolution 1593 (2005).

In a world where the need for justice and reparations for the wrongs endured by millions of victims is imperative, the role and the importance of the International Criminal Court (ICC) have become indisputable. That is why the universal combat against impunity and to uphold the rule of law is vital everywhere, including in Africa, where it was reiterated in the Constitutive Act of the African Union.

Senegal has great faith in these unshakable principles, and that is why we are endeavouring to promote dialogue on matters relating to the relationship between the African Union and the ICC. Indeed, we are firmly of the belief that changing the negative perception of the Court, as well as the effective handling of the concerns of victims of serious crimes, necessarily requires open dialogue and close cooperation as the only way to ensure their synergy in the combat against impunity that Africa has consistently waged.

Indeed, through their mass ratification of the Rome Statute, African countries expressed their commitment to combating impunity across the world, which makes Africa the largest regional group among the Assembly of States Parties, whose presidency my country currently holds.

I turn now to the situation in Darfur. My country remains convinced that there can be no military solution there and that the only way to achieve a comprehensive and lasting peace is through dialogue and reconciliation. While welcoming the efforts of the Sudanese Government in the implementation of the Doha Document for Peace in Darfur, which prioritizes a political settlement of the situation, we would nonetheless appeal to all parties to end the hostilities. Furthermore, it is imperative that the international community take into account the issue of the crimes committed so as to find a solution to the question of impunity, as called for by the African Union in its appeal for the re-establishment of peace and justice in Darfur, which should be heeded. That is why we continue to condemn most firmly all forms of violence against civilians, in particular against women and children, in Darfur. Similarly, the attacks against humanitarian workers and the staff of the African Union-United Nations Hybrid Operation in Darfur are unacceptable, and the perpetrators must be held accountable.

We believe that the time has come to heal the wounds inflicted and to work for reconciliation in order to establish a lasting and definitive peace in Darfur. It is my belief that thanks to the openness and cooperation that parties must demonstrate to resolve common issues in the interests of peace, discussions could lead to a positive contribution to the shoring up of the principles and ideals that unite us all here in this Chamber.

Mr. Méndez Graterol (Bolivarian Republic of Venezuela) (*spoke in Spanish*): The Bolivarian Republic of Venezuela would like to thank the Prosecutor of the International Criminal Court (ICC), Ms. Fatou Bensouda, for introducing the twenty-third report on the investigation into the situation in the Sudan, in accordance with resolution 1593 (2015). At the same time, my country would like, as a State party to the

Rome Statute, to acknowledge the work done by her Office and the International Criminal Court (ICC) in the fight against impunity and the promotion of justice.

Our country firmly supports the efforts of the Prosecutor to ensure justice and accountability in the fight against impunity, as well as the strengthening of the international criminal justice system, so as to make it more transparent and effective. We reiterate the importance of international cooperation in achieving the objectives of the Court, as well as the firm objective of defending the strengthening of the institutions and the effectiveness of the ICC as the only body in the criminal sphere.

In that respect, we encourage all Member States that are not yet parties to the Rome Statute to accede to that instrument in order to achieve its universalization and to contribute to building the rule of law nationally and internationally.

More than 10 years have passed since the adoption of resolution 1593 (2005), through which the Security Council referred the situation in Darfur to the Office of the Prosecutor. Since then, very little progress has been made with respect to its implementation. Although we believe that some gradual progress has been made through the implementation of the provisions of the Doha Document for Peace in Darfur as well as the mediation efforts of former president Thabo Mbeki, the situation in Darfur remains a source of concern.

In this respect, we share the concerns of the Prosecutor concerning the continuation of the violence that is affecting the civilian population. For our country, accountability is an indispensable condition for achieving a lasting peace in the Sudan. Hence, we stress that those who have committed violations of human rights and international humanitarian law in the armed conflict in Darfur must be tried. This would help not only to break the prevailing cycle of impunity but also to prevent the recurrence of these actions, as well as to promote confidence in the institutions of the Sudanese State.

In this respect, we believe that it would be beneficial to promote an effective dialogue between the International Criminal Court and the African Union in order to study practical arrangements that would facilitate the work of the Prosecutor and of the Court, including the possibility of taking certain steps in the region and of achieving agreements based on mutual respect and full respect for international law. We believe that this would complement regional initiatives to fight impunity.

We support the efforts of the Prosecutor to ensure that justice and accountability become a reality and also encourage the Court to assess the situation objectively and impartially. Its role in the impartial investigation of the actions of all parties to the conflict is extremely important so as to strengthen the credibility of this legal body. The Court must work in a balanced manner in order to promote justice and to achieve a firm, lasting and comprehensive peace.

In that context, we are concerned by the attempts made by some to politicize the work of the ICC, which affect the principles on which the Court is based, such as autonomy, independence, impartiality, transparency and objectivity. Undermining these principles would weaken the institutions of the Court, as we would be applying justice in a selective fashion, using a policy of double standards to the detriment of the spirit and purpose of the Rome Statute.

The arrest warrant issued by the International Criminal Court against President Omar Al-Bashir undermines the right to jurisdictional immunity for the sitting Heads of State of those States that are not party to the Rome Statute. The process to suspend the jurisdictional immunity of a sitting President in exercising his office so that he can be naturally tried by justice in his country represents a procedure set out in the Constitution of the Republic of the Sudan. In that regard, Venezuela shares the position of the African Union, the Organization of Islamic Cooperation, the League of Arab States and the Movement of Non-Aligned Countries on the matter. However, we call upon the Government of the Sudan, the competent regional authorities and neighbouring States to cooperate effectively with the International Criminal Court with respect to the arrest of those suspects who do not enjoy jurisdictional immunity and who are currently being investigated by the Office of the Prosecutor for alleged crimes against humanity, war crimes and genocide and whose arrest warrants have been issued by the International Criminal Court in the case of the situation in Darfur.

In conclusion, we encourage the strengthening of cooperation between the International Criminal Court and the Government of the Sudan, as well as by the countries of the region, in order to help to find a solution to the conflict in Darfur whereby the objectives of peace

and justice are achieved for the benefit of the people of that country, in accordance with international law.

Mr. Taula (New Zealand): We thank Prosecutor Bensouda for her briefing and for the twenty-third report on the situation in the Sudan.

At this time last year, New Zealand expressed deep concern and called for accountability for the serious crimes committed (see S/PV.7460). The situation has not notably improved since then. Civilians in Darfur continue to suffer from the consequences of conflict. The past year also saw further attacks on peacekeepers, some fatal, and the human rights and humanitarian situations remained dire.

As noted by the Prosecutor, all five International Criminal Court (ICC) indictees remain at large. Resolution 1593 (2005) placed an obligation on the Government of the Sudan to cooperate fully and to provide any necessary assistance to the Court and the Prosecutor, as well as urged other Member States to cooperate. Those obligations have been widely ignored. Nor has there been any meaningful accountability at the national level. It is not surprising that the victims are losing hope that justice will ever be done.

The Sudan's ongoing non-cooperation with the Court amounts to non-compliance with a Council resolution and its obligations under the Charter of the United Nations. While this mostly relates to the four Government of the Sudan indictees, the Sudan also has not responded to the ICC requests for assistance in the case against Abdallah Banda, a rebel group indictee allegedly responsible for a deadly attack against African Union peacekeepers in South Darfur in 2007. Over the years, the Secretary-General has relayed 11 findings of non-cooperation to the Council with regard to that referral.

During the current reporting period, President Al-Bashir has crossed international borders, and further findings of non-cooperation may follow in the coming months. The Council has yet to respond to those findings in any meaningful way. While not every member of the Council is an ICC State party, we share a common interest in ensuring that the decisions of the Council are complied with. When that does not happen, the credibility and effectiveness of this institution are undermined, and the message is sent that Council decisions can be ignored without consequences. That should be of concern to all those who value the role, reputation and legitimacy of this organ.

In December, my delegation made two proposals that we believe could help end the current malaise in the Council's consideration of the issue. We believe they are no less relevant today.

First, as noted by Ms. Bensouda, the Council needs to be more structured in its consideration of the findings of non-cooperation. There is currently no consistent practice for dealing with them. In most instances, the Council does not even discuss them. In our view, when a finding of non-cooperation is received, the Council should discuss it. As we would with any other issue, we should consider what tools the Council has at its disposal to deal with the issue, whether it be a draft resolution or statement, or something short of that, such as a letter from the Council or a meeting with the country concerned, and then the Council can determine on a case-by-case basis what response is most appropriate.

We accept that the Council may not always agree on how to respond. But if the Council were to ignore every issue where agreement was difficult, we would hardly ever meet. Simply continuing to not respond is neither productive nor credible, which goes to the effectiveness of the Council and its willingness to stand by its own decisions. The *Banda* case seems an obvious place to start in implementing a more structured approach. We will continue to work with other Council members on this in the coming months.

Secondly, we need to give serious thought to how we can achieve a more productive relationship with the Government of the Sudan. There is a clear need for the United Nations and for the Council to consider what can be done to change the nature of the current relationship with Khartoum, proceeding from a firm understanding of the current situation on the ground.

We have been encouraged by the initial progress made under the new leadership of the African Union-United Nations Hybrid Operation in Darfur (UNAMID), in particular with the tripartite meetings among the Government, the African Union and the United Nations. But there is a long way to go. Those positive steps have so far done little to resolve the serious issues UNAMID faces with access and visa issuance. But we believe the Council should look at how it can best support a more constructive engagement with the Government of the Sudan, including by considering options such as a Council visit to the Sudan. We are clear-eyed about the challenges involved in forging a new relationship, and we need to see a

greater willingness by the Government of the Sudan to engage constructively.

We have set up some tangible ways that we believe the Council can show that it is willing to do more than just talk about the protection of civilians. There is no guarantee they will succeed, but given the alternative, which is a continuation of the status quo, we believe it is at least worth trying.

Mr. Gimolieca (Angola): We thank the Prosecutor of the International Criminal Court, Ms. Fatou Bensouda, for her briefing on the current judicial activities of the International Criminal Court (ICC) and on the situation in Darfur, as set out in the twenty-third report submitted to the Security Council pursuant to resolution 1593 (2005).

As a member of the African Union, the Republic of Angola reiterates the African position regarding the activities of the International Criminal Court vis-à-vis sitting African Presidents. It should be recalled that, at the Summit of Heads of State and Government of the African Union held in in January and June 2015, in Addis Ababa and in Johannesburg, respectively, the African Union requested the suspension of the proceedings of the ICC against the President of the Sudan, Mr. Omar Al-Bashir, and urged the Security Council to withdraw its referral of the case.

In a letter dated 8 February 2016 addressed to the President of the Security Council, the Chairperson of the African Union Commission communicated the African Union's resolve to send to New York a ministerial committee of the Ministers for Foreign Affairs on the issue of the ICC to discuss with the Security Council the African Union's concerns in its relationship with the ICC. We look forward to that visit and expect that a more constructive relationship between the African Union and the Security Council with regard to the ICC will emerge from that interaction.

Angola upholds the African Union position on these issues while advocating for dialogue as the sole solution to address and settle the political dispute in Darfur.

Mr. Vitrenko (Ukraine): I would like to thank International Criminal Court (ICC) Prosecutor Bensouda for her useful briefing.

Ukraine remains deeply concerned about the increased violence and insecurity in Darfur, the growing number of internally displaced persons and the restriction of humanitarian access to conflict areas, where a vulnerable civilian population resides.

We strongly condemn the aerial bombardments and ground attacks, which have resulted in hundreds of civilian deaths and destroyed villages, as well as incidents of attacks on humanitarian aid workers and peacekeepers. We are no less concerned about reports of continued violations of international humanitarian law and human rights, in particular sexual violence and gender-based crimes.

Article 27 of the Rome Statute provides that the Statute shall apply equally to all persons without any distinction based on official capacity. In particular, in their official capacity as a Head of State or government, a member of a Government or Parliament, an elected representative or a Government official shall in no case be exempt from criminal responsibility under the Statute. In that regard, we believe that the arrest warrants against suspects in the ICC's investigation into the situation in Darfur should be carried out and that the Sudan must strictly comply with its obligations.

The failure of some State parties to the Rome Statute to carry out their obligations remains another obstacle towards delivering justice. We need to pay particular attention to these facts in the light of the 11 judicial decisions on the issue of non-compliance and requests for appropriate action to be taken regarding State parties, as well as non-State parties, that have failed to execute the ICC arrest warrants.

However, irrespective of being party or non-party to the Rome Statute, States Members of the United Nations should consolidate their efforts in the fight against impunity. By failing to bring those responsible for the gravest crimes to justice, the international community implicitly encourages violence in the rest of the world.

We call on all State parties to the Rome Statute to promote cooperation and carry out the arrests of individuals wanted by the ICC in the Darfur situation.

Finally, we would like to express our support to the Office of the ICC Prosecutor in its work.

Mr. Oyarzun Marchesi (Spain) (*spoke in Spanish*): We are grateful for the presence in the Security Council once again of the Prosecutor of the International Criminal Court. I would like to reiterate the firm commitment of my country to the Court and to international criminal

justice, as well as its acknowledgement of the work of the Prosecutor and the team at her Office.

More than a decade has gone by since the Council referred the situation in Darfur to the Court in the light of the serious allegations about the commission in Darfur of the most serious international crimes. Eleven years later no official has been tried, the conflict continues and civilians continue to suffer the consequences of the conflict; eleven years later there is still no justice in Darfur. The Sudan must cooperate with the Court and must comply with the mandate established in resolution 1593 (2005) in accordance with the obligations that are imposed by the Charter of the United Nations as a member of the Organization.

We are living in a world marked by conflict in which violations of international humanitarian law, as well as human rights abuses, happen without any consequence for those responsible, where accountability is the exception and where impunity for such acts shamefully becomes commonplace. This should not be the case, especially since never before have we had so many means at our disposal in order to prevent it, including the most extensive conventional network and the most developed international justice system in our history.

The reality shows, however, that the means are not enough when there is no political will in order to use them. The International Criminal Court is a perfect example of this. It is the best instrument against impunity that the international community has ever had but, in the case of Darfur, the lack of cooperation on the part of many States, some of them State parties to the Rome Statute, and the lack of support by the Council has not allowed them to carry out its task. As we have said on previous occasions, if only for the sake of consistency, the Council needs to react. We must be concerned by the message that we convey through our persistent inaction in the light of non-compliance for years with a resolution adopted under Chapter VII. On 11 occasions, the Court has brought to the knowledge of this organ different cases of non-compliance in relation to the situation in Darfur, and on 11 occasions the Council has been unable not just to adopt a decision, but even to discuss the situation.

Let me refer to the latest of those notices. It was received in December and it refers to the case of Mr. Abdallah Banda. He is alleged to be responsible for an attack against a contingent of the mission of the African Union that, on 29 September 2007, resulted in the deaths of 12 of its members. In October 2007, the President of the Council condemned the attack, calling for

> "no effort [to] be spared so that the perpetrators [may] be identified and brought to justice. (*S/PRST/2007/35*)

There is not much left to be done except for Mr. Banda to be found and tried as the alleged perpetrator of the attack. The Council, in line with the comments made by the representative of New Zealand, should at least be consistent with regard to its own demands. In the meanwhile, the Blue Helmets serving in the African Union-United Nations Hybrid Operation in Darfur (UNAMID) continue to lose their lives in Darfur.

The conflict in Darfur must end. Spain reiterates its appeal to all parties to join the peace process in a constructive spirit and with the determination of finding a negotiated and inclusive political solution. While we await peace, we would like to remind all parties of their obligation to respect the norms of international humanitarian law and to immediately put an end to attacks against the civilian population.

We remind the Government of the Sudan of its particular obligation to protect its population and, once again, we call for the removal of all obstacles and restrictions that prevent UNAMID from carrying out its mandate, in particular with respect to protecting the civilian population and guaranteeing humanitarian assistance.

I would like to conclude by stating that impunity is still a serious challenge and a threat for the peace process and a threat to civilians, the majority of whom are being denied the right to reparations. Those are words that come from the latest report of the Secretary-General, as well as the Chairperson of the African Union Commission on UNAMID.

We call on the Council and all Member States, whether they are part of the Rome Statute or not, to cooperate to prevent a climate of impunity in Darfur from continuing. We must understand that fighting against impunity is also fighting against unlimited violence and against wars without rules. It is defending the dignity of people, which is mentioned in the Preamble to the Charter of the United Nations. It is preventing conflicts. And, in the end, it is fighting for peace, because peace is not sustainable in the absence of justice. There are not many reasons to be optimistic,

but we cannot abandon the struggle. That is why we encourage Ms. Bensouda and her team to not yield in their efforts. We must trust that some day the situation will change and that some day her work will bear fruit and bring justice to the victims of Darfur.

Mr. Ibrahim (Malaysia): I thank Ms. Bensouda for her briefing. We have taken note of the twenty-third report of the Prosecutor of the International Criminal Court, on the situation in Darfur, submitted pursuant resolution 1593 (2005) and the activities of the Office of the Prosecutor since her last report.

Malaysia remains concerned with the humanitarian and security situation in Darfur. The ongoing conflicts have resulted in civilian deaths, including of women and children, as well as more than 129,000 people displaced from Jebel Marra since mid-January. Given the deplorable situation, all parties to the conflict are reminded of their obligations under international human rights law and international humanitarian law and must refrain from all acts of violence against civilians, including humanitarian and peacekeeping personnel. It is therefore incumbent upon the Government of the Sudan to create an enabling environment where trust and confidence can be built. In this respect, its compliance with relevant Security Council resolutions would be the necessary prerequisite towards that end.

The protracted conflict in Darfur clearly indicates that there is no military solution that will not bring dire consequences or prolong destruction and human suffering. It is for this reason that we welcome the signing of the road map agreement by the Government of the Sudan in March as a commendable step forward. The parties that have not yet signed the agreement should be encouraged to do so urgently and engage constructively in a dialogue.

We also welcome the resumption of the work of the joint working group to deliberate on cooperation with the African Union-United Nations Hybrid Operation in Darfur. In the light of the spirit of constructive engagement by the Government of the Sudan, it is hoped that this will mark a new phase of collaboration with the United Nations, the African Union and other international partners towards peace and security in the country.

Mr. Aboulatta (Egypt) (*spoke in Arabic*): First of all, I would like to thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for her briefing today to the Security Council on the twenty-third report published pursuant to resolution 1593 (2005). The report of the ICC Prosecutor examined a number of challenges and puts forth comments concerning the Court's performance with respect to the situation in Darfur. I would now like to highlight the following points.

There is a common African position when it comes to the way in which the ICC deals with certain African matters. This position is reflected in, for example, Decisions 547, 586 and 590, of the twenty-fourth, twenty-fifth and twenty-fifth African Union summits, respectively. As provided for in these decisions, Africa is firmly committed to fighting impunity in accordance with the Constitutive Act of the African Union. We therefore call for the suspension of the procedures undertaken by the ICC against President Omar Al-Bashir, the President of the Sudan.

The aforementioned decisions of the African Union summits urge the Security Council to put an end to the referral of the Darfur situation to the ICC. We therefore express our dissatisfaction at the fact that the Security Council has not acceded to the requests of the African Union in this area over the past two years. Furthermore, in the light of the reservations expressed by the countries of the African Union with regard to the Rome Statute, the ICC must refrain from taking measures that would affect the peace, security, stability, dignity, sovereignty and territorial integrity of the countries of the African continent. In addition, the ICC must respect the provisions of international law with respect to the immunities granted to heads of State and sitting officials.

In conclusion, we reject any measure taken against African States on the pretext that these States do not respect or assume their responsibilities under the Rome Statute or that they are not upholding resolution 1593 (2005). We reject any measure against States that have not arrested or delivered President Al-Bashir to the ICC, especially since African countries must respect their obligations stemming from resolutions and decisions of the African Union summit as well as the Constitutive Act of the African Union.

Mr. Shen Bo (China) (*spoke in Chinese*): China has taken note of Prosecutor Bensouda's briefing.

At present, the Darfur region of the Sudan is still facing such problems as the slowness of progress in its political process and armed groups resorting to violent means to disrupt peace and stability in the region. China

appreciates the efforts of the African Union High-Level Implementation Panel (AUHIP) to engage in diplomatic good offices to actively promote the political settlement of the Darfur question. We welcome the fact that the Sudanese Government has signed the road map proposal submitted by the AUHIP. It is hoped that it will lead the opposition and armed groups, proceeding from the broad perspective of maintaining peace and stability in the Sudan, to quickly sign the road map proposal and the Doha Document for Peace in Darfur in a common effort to seek a comprehensive and political settlement of the Darfur question. The international community should adopt an objective and fair position, play a constructive role and create favourable external conditions for the political settlement of the Darfur question.

On the question of the Sudan and the ICC, China's position has not changed. We welcome the fact that the African Union (AU) has established a ministerial committee to deal with the question of the Sudan at the ICC. We support the holding of dialogue between the Council and the AU ministerial committee so as the voices of African countries may be heard and their concerns accommodated. We believe that the legitimate concerns of the AU and its members, including the Sudanese Government, on ICC-related questions, should be fully heeded.

Mr. Pressman (United States of America): I thank Ms. Bensouda for her briefing.

The Security Council referred the situation in Darfur to the International Criminal Court in 2005. Since then, the instability, insecurity, violence and suffering in Darfur have continued unabated. But it is too facile to simply recall the acts of violence that recur year after year. That ignores the way in which these acts compound each other. This year, for instance, we see not only that the conflict between the Government of the Sudan and armed opposition groups has reignited in Jebel Marra, including such incidents as an attack by a group of unidentified armed men that wounded a peacekeeper from the African Union/United Nations Hybrid operation in Darfur (UNAMID), but also the downstream consequences of repeated bombings including against civilian targets.

The United Nations has verified that 68,000 people have been displaced since January of 2016 due to the fighting, raising the total number of internally displaced persons in Darfur to more than 2.7 million, with 5.8 million people in need of humanitarian assistance. Further compounding the problem has been the obstruction of humanitarian assistance, including food and critical medical care. We remain deeply concerned by the Government of the Sudan's de facto expulsion of the head of the Office for the Coordination of Humanitarian Affairs (OCHA) in the face of this critical humanitarian situation.

Likewise, access restrictions and other impediments imposed on UNAMID have hampered the Mission's ability to perform its most basic tasks. For instance, on 15 April, to cite just one example, UNAMID aircraft en route to Misteri, West Darfur, had to modify their usual flight route following a warning from the Government of the Sudan that United Nations flights over the Sudanese-Chadian joint forces camps would be shot down.

The Secretary-General has reported for months that the vacancy rates in UNAMID's human rights and protection-of-civilians sections are 50 and 40 per cent, respectively. These vacancies in the human rights and protection staff of UNAMID are unacceptable and they are due to the systematic denial of visas by the Government of the Sudan.

Restrictions and impediments imposed by Khartoum have also precluded United Nations agencies from ascertaining the scale of civilian casualties and displacement from fighting, and from otherwise comprehensively reporting on the situation on the ground. These provocative acts — acts like kicking out the head of OCHA — have also done little to awaken the Security Council's readiness to respond. That is not how the system was supposed to work. Indeed, the Security Council's inability to agree on even the most basic responses to extraordinary provocations is a collective failure.

As we consider this vicious cycle and our seeming inability to agree on how to stop it, we at least must remain committed to reaffirming our commitment to justice for the victims of genocide and atrocities in Darfur. Failure to provide accountability for the injustices the victims and survivors have incurred emboldens further abuses in the Sudan and outside of the Sudan. It is in that spirit and, I think, appropriate to our discussion today about the importance of justice, that we were surprised and disappointed to read the op-ed that appeared in the New York Times on Tuesday, attributed to South Sudan's President Salva Kiir and Vice-President Riek Machar, which called for halting

the very hybrid court both leaders agreed to support when they signed the peace agreement in August 2015.

This op-ed offered a variety of reasons for opposing the efforts being led by the African Union to bring justice to the victims of South Sudan, perhaps most notably that "building a nation is not an easy task". Indeed it is not, and these two leaders certainly have an immense task in front of them, but part of that difficulty — part of the challenge of rebuilding a nation — lies in pursuing both justice and reconciliation, not one at the expense of the other. The argument in this op-ed that justice will "destabilize efforts to unite our nation by keeping alive anger and hatred" could not be further from the truth.

As we have seen in countless other settings after widespread violence, reconciliation and justice are mutually reinforcing, not mutually exclusive, and that is precisely why both are included in the August 2015 Peace Agreement, and it is precisely why the United States will continue to make every effort to both support the African Union in its establishment of the hybrid court and to promote reconciliation among the people of South Sudan. Neither in South Sudan nor in the Sudan is justice an impediment to unity and sustainable peace. Indeed, in both countries, justice is essential to it.

It is in that spirit that we thank the Prosecutor for her Office's continued investigations into abuses in Darfur and for her long-standing efforts to promote justice for attacks on civilians, including humanitarian workers and peacekeepers by Government and armed opposition groups. We also continue to support UNAMID and its work, which is crucial to efforts to alleviate the suffering of civilians and to ensurin that allegations of atrocities can be investigated, as in the numerous cases of conflict-related sexual violence documented by UNAMID in 2015, and to which the Prosecutor refers in this report.

It is critical that the Security Council, for its part, do more to help ensure compliance with resolution 1593 (2005) and press Sudanese authorities to fulfil the Sudan's obligation to cooperate fully with the Court and with the Prosecutor. While, as the Security Council noted in a letter to the ICC, the decisions of pre-trial chambers on the situation in Darfur have been brought to the attention of members of the Council, this is far from enough. We also continue to call on all Governments not to invite, facilitate or support travel for individuals subject to arrest warrants in the ICC Darfur situation, and for the Sudan to fully cooperate with the ICC, and we continue to believe that the Court's arrest warrants in the Darfur situation should be carried out.

History has shown that the road to accountability can be long and difficult but that justice can ultimately triumph against long odds. The developments in the Extraordinary African Chambers in Senegal, including the recent conviction of former President Hissène Habré, are but one testament to the idea that the tenacity of victims of mass atrocities in seeking justice should not be underestimated, and this example shows what is possible when Governments, regional bodies and victims' groups cooperate to ensure that justice is done.

I would like to emphasize this point because, indeed, it is not just institutions and Governments that have a role to play. Individuals can help too, and they are essential. We are heartened by those in civil society, from South Africa to Uganda, who have continued to show their solidarity with those who have suffered so much, and while it is easy to be daunted by the obstacles to accountability, the International Criminal Court's investigation in Darfur has brought some measure of hope to victims of atrocities there.

There can be both purpose and dignity in coming forward and speaking out about atrocity crimes. We commend the bravery of these victims and look forward to the day when they, like the victims of the Habré regime, see justice delivered in a court of law. The United States will continue to work with this Security Council and other partners in the international community to promote an end to Sudan's many conflicts and a just and sustainable peace.

Mr. Bermúdez (Uruguay) (*spoke in Spanish*): I thank you, Sir, for convening and including this meeting in the June programme of work. I especially welcome the presence of the Prosecutor of the International Criminal Court, Ms. Fatou Bensouda, and the introduction of her detailed twenty-third report on the activities of her Office with respect to the situation in Darfur, in accordance with resolution 1593 (2005).

Uruguay takes this opportunity to reiterate its full support for the role of the International Criminal Court in strengthening the rule of law at the international level by bringing to justice those responsible for the most serious crimes of concern to humanity as a whole, as defined in article 5 of the Rome Statute, wherever they may be. In that regard, we call once again on the States Members of the United Nations that are not yet

parties to the Rome Statute to accede to it and to thereby contribute to the universalization of this instrument, which is vital in combating impunity and defending all the inhabitants of the planet from atrocious crimes that pose a serious threat to the peace and security of all humankind.

Uruguay shares the concerns noted in the Prosecutor's most recent report, which include the deterioration of the security situation in Darfur, an increase in aerial bombardments, ongoing rapes and acts of sexual violence, continued forced displacement as a result of violence, as well as obstacles, threats and attacks on humanitarian workers and the personnel of the African Union-United Nations Hybrid Operation in Darfur. Moreover, in her most recent report, the Prosecutor reminds us, as she has in previous reports, that the arrest warrants issued by the International Criminal Court have yet to be executed. The five persons accused of war crimes and crimes against humanity — one of them accused of genocide — have not yet been subject to the Court's jurisdiction and continue to occupy high-level Government posts in their country. This scenario reflects States' non-cooperation with the International Criminal Court.

As a State party to the Rome Statute, Uruguay is concerned by all cases of non-cooperation. In this particular case, it is worth recalling that resolution 1593 (2005) which in paragraph 2 decides that the Government of the Sudan and all other parties to the conflict in Darfur shall cooperate fully with the Court and the Prosecutor. It also urges all States and concerned regional and other international organizations to cooperate fully. Therefore, faced with obvious non-cooperation on several occasions and for several years now, we believe that the Council should assume a more active role in reviewing cases of non-cooperation with the International Criminal Court and ensure that arrest warrants are executed, a necessary condition to enable the Court to fulfil its mandate.

To conclude, I reiterate Uruguay's commitment to the work of the Prosecutor in her investigations of the crimes committed in Darfur, which will undoubtedly contribute to strengthening the rule of law and the establishment of a society where rights and guarantees are fully respected for all its inhabitants, who have seen their fundamental rights abused for many years now.

Mr. Okamura (Japan): Let me begin by thanking Prosecutor Bensouda for her briefing and for introducing her twenty-third report on Darfur. We are convinced of the importance of the fight against impunity and the rule of law. That is why Japan has consistently supported the activities of the International Criminal Court (ICC). I would like to assure the Prosecutor of Japan's full support for the work of her Office.

In 2005, Japan, as a member of the Council, supported resolution 1593 (2005), which referred the situation in Darfur to the ICC. In light of the serious violations of human rights committed in Darfur, we believed that there was a role for the ICC in bringing the perpetrators to justice. Japan respects the independence and decisions of the ICC concerning arrest warrants emanating from resolution 1593 (2005).

Despite the efforts of the ICC, it is regrettable that justice has not been served on behalf of the victims in Darfur. We note the Trial Chamber's finding in its decision on the *Banda* case that the Sudan had failed to cooperate with the Court. We stress that resolution 1593 (2005) decided that the Government of the Sudan and all other parties to the conflict in Darfur should cooperate fully with the ICC and the Prosecutor. We urge the full implementation of the resolution in order to achieve justice in Darfur. It is appropriate for the Council to follow up on this matter, particularly the decision on the *Banda* case, as communicated to the Council on 11 December 2015.

To make Darfur stable, there is no choice but to move the political process forward. Japan welcomes the signing by the Government of the Sudan, in Addis Ababa on 20 March, of the road map addressing the most important issues: the ceasefire, the delivery of humanitarian aid and a truly inclusive national dialogue. We call upon other parties to sign the road map. In that regard, we appreciate the continued efforts exerted by the State of Qatar, especially the holding late last month of the recent Doha meeting with armed groups and the African Union-United Nations Hybrid Operation in Darfur (UNAMID).

We are concerned about the access restrictions currently in place in Central Darfur, and call upon all parties to grant access to the conflict areas so that humanitarian actors can quickly address the humanitarian situation. We are also concerned about the decreased ability of UNAMID to function, especially in the light of such logistical issues as the problem of containers. In order to resolve these issues, we look forward to further cooperation between the

Government of the Sudan and UNAMID, in accordance with the relevent Council resolutions, for the sake of the Sudanese people in need.

Without the cooperation of States, the ICC cannot execute its mandate. We urge all States, including non-State parties and concerned regional and other international organizations, to cooperate fully with the ICC, in accordance with resolution 1593 (2005), which binds all United Nations Member States.

The President (*spoke in French*): I shall now make a statement in my national capacity.

I thank the Prosecutor of the International Criminal Court (ICC) for her twenty-third report and her briefing to the Council.

As has been noted, it has been 11 years since the Security Council adopted resolution 1593 (2005). That decision had the clear objective to prevent new atrocities by fighting impunity and thereby promoting the reconciliation and stability that are prerequisites of development. The goal of fighting impunity remains not only fully valid today, but fully necessary.

As emphasized by the Prosecutor's report, the situation in Darfur remains marked by ongoing violence. The aerial bombing by the Government of the Sudan has intensified since the beginning of the year, indiscriminately and disproportionately affecting civilian populations. These ongoing attacks on civilians remain intolerable, as are violations of human rights and international humanitarian law. Women remain the targets of completely unacceptable sexual violence. Assaults and harassment against the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and humanitarian actors, as well as the obstacles that are placed on their movements, prevent these organizations to carry out their mission to protect civilians and assist the most vulnerable populations.

In this context, more than ever, justice must be handed down and responsibilities identified so as to prevent and deter such acts. Impunity for past crimes and its implications for possible future crimes are unacceptable. We therefore regret that the arrest warrants issued by the International Criminal Court remain unenforced. This refusal to investigate and prosecute perpetrators can only feed the future cycle of violence in Darfur. And yet, the Council and the international community know the right direction and decisions to take in order to allow Darfur to regain peace and stability.

First, there can be no military solution to this conflict. The settlement of the conflict in Darfur is political by nature, and must involve the Government and rebel groups. We regret in this regard the lack of real progress towards establishing an inclusive process to work for lasting peace. The African Union Peace and Security Council has called for a comprehensive political solution, including in its regional aspects. The path to this goal begins with the cessation of hostilities by all parties. France supports the efforts of the African Union High-Level Implementation Panel to advance in this direction.

Secondly, the protection of civilians must be fully ensured. The continuing violence and insecurity prevent any prospect for long-term stabilization and reconstruction. We regret that UNAMID remains subject to access restrictions and supply and operation blockages. It is essential that the Sudanese authorities fully cooperate to allow UNAMID to fulfil its mandate, in accordance with decisions of the Council and the African Union Peace and Security Council .

Thirdly, unimpeded humanitarian access to civilian populations and the displaced must be facilitated and guaranteed. The needs of over 2.6 million displaced are enormous. Humanitarian actors must be able to respond. The expulsion of the head of the Office for the Coordination of Humanitarian Affairs is of concern in that regard.

Fourthly and lastly, it remains essential that the perpetrators of the crimes be prosecuted and that justice be done. I recall the importance of the obligation of all United Nations Member States to cooperate, in accordance with the resolutions adopted by the Council, without which the prosecution of the most serious crimes by the ICC will remain dead letter. This obligation rests primarily with the Sudan, which must execute the arrest warrants issued against its nationals for offences committed on its territory and cooperate with the Court, as required by resolution 1593 (2005). State parties to the Rome Statute also have a key role to play in terms of their statutory obligation to cooperate with the ICC and execute arrest warrants against persons within their territory. In that regard, we regret the fact that this requirement has not been met by some States in recent months. We are grateful to the Office of the Prosecutor for monitoring this major

issue. In that context, the Council's responsibility is clear and twofold.

On the one hand, the Council must make cooperation with the Court effective and ensure that arrest warrants are carried out. As emphasized by the Prosecutor, it is up to the Council to respond to instances of non-cooperation with the Court. In that regard, we are a ready to consider modalities for action by the Council. It is also essential that the Assembly of State Parties remain engaged on cases of non-cooperation with the ICC, as well as international organizations. In that connection, it is appropriate to continue limiting contacts with persons subject to an arrest warrant of the Court to those deemed essential in line with the Secretary-General's policy. France recalls the importance of the United Nations as a whole continuing to implement those guidelines and apply the relevant provisions of resolution 1593 (2005).

On the other hand, the Council must pursue efforts for an end to violence against civilians, as well as the search for an inclusive political solution. That is the only way to achieve long-term peace and stability in Darfur. To do that end, UNAMID has a significant role to play and should be able to fulfil its mandate. It is essential that free and unrestricted access be guaranteed to the mission throughout the entire territory of Darfur. That will be a point to which we pay particular attention during the next renewal of the mandate of UNAMID.

I now resume my functions as President of the Council.

I give the floor to the representative of the Sudan.

Mr. Mohamed (Sudan) (*spoke in Arabic*): I would like to congratulate you once more, Mr. President, on your assumption of the presidency of the Security Council for this month. I would also like to reiterate my thanks to Egypt, the Council's President last month, as well as to its Permanent Representative, for having efficiently presided over the Council 's work, in May and for ensuring that certain topics of prime importance to Member States in general, and to the Group of African States in particular, continued to be part of the agenda and work of the Council, bearing in mind that issues pertinent to the situation in Africa account for more than 60 per cent of the Council's work, albeit not in a positive sense, in our opinion, as most of them relate to sanctions and coercive measures that are based on the feasibility concept, which guides, for instance, the work of the so-called International Criminal Court (ICC), including its report on my country, which is the subject of this review.

It is important, however, to emphasize at the outset that I am delivering this statement in my capacity as the Permanent Representative of the Republic of the Sudan on behalf of the President of the Republic of the Sudan, in respect of the Court's report, which is being discussed solely in the Security Council. I would like to reiterate that we have no connection whatsoever to the Court, to which the Council makes referrals within its purview, not pursuant to the provisions of a certain Chapter of the Charter of the United Nations, but in accordance with an article in the Rome Statute of the ICC that is not applicable to the United Nations or to any State Member unless such State wilfully elects to be party thereto or subjects itself to the jurisdiction of the Court. This is the principle of pacta sunt servanda, stipulated in article 34 of the Vienna Convention on the Law of Treaties of 1969, which has become part and parcel of established customary international law and of jus cogens, which cannot be set aside.

That leads me directly to resolution 1593 (2005), which the Council adopted under Chapter VII of the Charter and whereby it referred the situation in Darfur to the Court. It should be noted that article 13 (b) of the Rome Statute does not indicate in any way, neither expressly or implicitly, that the Statute is applicable to States that are not party thereto. The Council might also recall that this fact is repeatedly emphasized in every provision throughout the Statute that relates to non-party States, such as the provisions covering issues of cooperation. It should also be noted that the application of article 13 (b) has opened the door wide for political manipulation and for the use of power politics and influence to subjugate some victimized countries and compromise the status of the African continent, since only those considerations are used as decisive factors in making referrals to the Court by the main political organ of the United Nations, namely, the Security Council. That is a fact that I attest to here before the Council in my capacity as the representative of a country with an authentic and long-standing membership in the Organization, and which is substantiated by international law in its letter, interpretation and rationale.

The least one can say about the decision to make this referral, upon which the Court has to date submitted 23 reports to the Security Council, is that it was made on entirely unfounded grounds. In addition, paragraph

6 of the resolution I mentioned, which was the result of bargaining among some permanent members of the Council, rendered the resolution null and void. I should like to refer to some quotations from what was said in the Council about the resolution by the representative of Brazil when it was adopted, on 31 March 2005. Here is what the representataive of Brazil had to say:

> "Brazil also was not in a position to support operative paragraph 6, through which the Council recognizes the existence of exclusive jurisdiction, a legal exception that is inconsistent in international law." (*S/PV.5158, p. 11*)

At the same meeting, the representative of the Philippines stated,

> "[o]perative paragraph 6 of the resolution is killing its credibility" (*ibid, p. 6*).

Nor was the representative of your country, France, Mr. President, happy with adoption of the resolution. He stated that

> "the jurisdictional immunity provided for in the text we have just adopted obviously cannot run counter to other international obligations of States and will be subject, where appropriate, to the interpretation of the courts of my country." (*ibid, p. 8*)

The International Criminal Court seized on that flawed decision of the Council, and the Court's Office of the Prosecutor made it a point to add to its defects, inadequacy and irrelevance by insisting on disregarding article 53 of the Rome Statute, thereby creating a deep rift between the principles of justice and peace, which are intrinsically complementary. We have a shining example in Africa, for instance, when South Africa, a leading nation in the struggle against racism and apartheid, succeeded in blending the two principles and created an exemplary system of both justice and peace, and chose to look beyond the horizon and build a future. The same continent — Africa — is now prey to the ruthless efforts of the Office of the Prosecutor, which wrote its present report while seeking to exercise the power and apply the jurisdiction of the Court selectively over the Continent.

On the other hand, successive resolutions of the Peace and Security Council of the African Union and decisions of African Summits issued since 2008, including the latest two resolutions adopted at those meetings, have invariably condemned the practice of the Court to target African leaders. It is unfortunate that countries of the Northern Hemisphere have practically exempted themselves, thanks to Security Council resolutions and bilateral agreements that grant them immunity, while African countries suffer discriminatory treatment that is worse today than what they suffered during the colonial era and in which they are denied the right to equal sovereignty and their leaders are targeted. Meanwhile, the Court seems to have no competence whatsoever over certain nationalities, no matter how gruesome the crimes committed by the holders of those nationalities are and regardless of the status of the perpetrators, from the top of the hierarchy, both political and military, to the lowest-ranking soldier.

The report also notes that courts in South Africa are fulfilling the country's obligations under the Rome Statute, to which South Africa is a party, and hastens to anxiously take up an issue that is still being appealed by the Court. However, I should like to include here an excerpt from our previous report of December 2015, depicting a moment when the Foreign Minister of South African stood in a meeting of the Assembly of States Parties to the Rome Statute, in November 2015, and said:

(*spoke in English*)

> "I wish to be absolutely clear. The perceptions of inequality and unfairness in the practice of the ICC do not only emanate from the Court's relationship with the Security Council. We ask ourselves, as have many, why no investigations have been open in Afghanistan, Iraq and Palestine after long periods of preliminary analysis notwithstanding clear evidence of violation?"

(*spoke in Arabic*)

African countries have received the President of the Republic of the Sudan in fulfilment of their rights and obligations as independent sovereign States, pursuant to the provisions of international law, as reflected in its well-established norms and customs, as well as in article 98 of the Rome Statute of the ICC itself, but the Court has chosen to misinterpret that article and apply it selectively, as we explained earlier. Likewise, African countries received the President of the Republic of the Sudan pursuant to the provision of article 23.2 of the Constitutive Act of the African Union, which continued to be reiterated at the Union's successive summits, with directives to Union members to abide by, adhere to and act upon.

The African continent, which is now witnessing such discriminatory treatment against its people, knows for sure that it was not a culprit in the horrors of the Second World War, which led to the establishment of the court in 1998, and that the credibility and impartiality of the Court — which have in fact been lacking since its inception — are being jeopardized by those who make its membership a cornerstone of their foreign policy, while providing the best part of its financial resources, monopolizing its offices, selectively nominating candidates for the remainder of its posts on the basis of political affiliation, and mandating that what development assistance and humanitarian aid they give is conditional to acceding to its membership.

How can we end any armed conflict in the world? How has the United Nations ended armed conflicts around the world? Has it not been via negotiated, political and peaceful settlement? That is exactly what the Sudan has done, in cooperation with the United Nations in Abuja in 2006 and when the Abuja agreement was later superceded in Qatar. Holding meetings with those who reject peaceful settlement, the way the Prosecutor has done, undermines international peace and the rights of the victims. Peaceful settlement is the practical and sole interpretation of what the Council has called for in claiming that there is no military solution to the conflict. The Prosecutor and her supporters can ask those who are thwarting the peace process why they are doing so.

When the Council reviewing the Court's report on Libya, the representative of the Russian Federation pointed out that the report in fact appeared to be more of a report from a monitoring mission. That would typically apply, word for word, to the report on the Sudan before us. We would also like to add that the Prosecutor's Office, headed by the Prosecutor of the Court, has resorted to blatant lying when it refers, in paragraphs 14 to 20, of the deteriorating situation in Darfur and the deterioration of the humanitarian situation, in what looks like a pretext to justify the perpetuation of the Court's jurisdiction over the Sudan.

We would like to call attention the report of the African Union-United Nations Hybrid Operation in Darfur (S/2016/268) for the same period covered by the court's report, which was reviewed by the Council on 6 April (see S/PV.7666), and which spoke of a decline in cases of tribal conflict, a decline in criminal acts, an increase in coordination between Sudanese security agencies and the Operation with respect to the prosecution of perpetrators of attacks against the mission's personnel, and a decline in criminal acts against voluntary organizations, and as regards national efforts to protect human rights and establish local branches of the National Commission for Human Rights in all the states of Darfur region.

I would like also to draw attention to the recent joint report of the joint working group of the United Nations, the African Union and the Government of the Sudan, issued on 22 May, which acknowledges the completion of procedures for an administrative referendum in Darfur as a last key step towards implementing the 2011 Doha Peace Agreement for Peace in Darfur; the role of the Implementation Follow-Up Commission in monitoring the implementation of the Doha Document for Peace in Darfur; a higher number of cases of human rights violations reported in Darfur, which reflects the enhanced awareness of citizens regarding their rights and growing confidence in relevant Government agencies; increasing cooperation between the African Union Mission in Sudan and Government authorities in Darfur; the interest of state governors in and their willingness to cooperate with humanitarian organizations and allow them full and unhindered access to the areas they may wish to reach; the efforts aimed at containing any tribal conflicts; and most importantly, the fact that environmental degradation and climate change are among the root causes of the conflict in Darfur. Consequently, do we not have the right to come to the conclusion that the ICC is willing to lie to justify its ongoing exercise of jurisdiction over the Sudan?

Finally, the ICC is seeking to exercise its jurisdiction based on the alleged and unfounded presumption that the judicial system in the Sudan is unwilling and unable to administer justice. In that respect, I would only like to recite, calmly and objectively, the following excerpt from the latest joint report of the United Nations, the African Union and the Government of the Sudan on the situation in Darfur:

(*spoke in English*)

> "The joint working group acknowledges the efforts of the state Governments and Prosecutor for Darfur Special Crimes Court to address the crimes committed during the conflict and restore law and order through the deployment of additional police, corrections and judicial human and material resources across the five states of Darfur, including

legal advisers, prosecutors, legal aid assistants and family child protection units."

(*spoke in Arabic*)

I hope I have thus made my contribution to the Council's work in respect of establishing the fallacious nature of the report of the Office of the Prosecutor of the ICC, in the hope the Security Council will decide to set aside such reports and play close heed to the demands made by the Open-Ended Committee of African Ministers on International Criminal Court, which was set up by the African Summit held in South Africa to end the meddling of the Court in the African continent.

The President (*spoke in French*): I now give the floor to Ms. Bensouda to respond to the comments made.

Ms. Bensouda: I regret all of the allegations of selectivity on the part of the Office that have been made. A close look at our work should suggest otherwise. I regret also the blatant misinformation presented by the representative of the Sudan to cover up the situation in Darfur. I regret this misinformation.

As has been commented on, there is a perceived tension between articles 27, on the irrelevance of official capacity, and 98(1), on cooperation with respect to waiver of immunity and consent to surrender, of the Rome statute. The question naturally arises: if a Head of State for whom an International Criminal Court (ICC) warrant has been issued travels through the territory of a State party, is that State party bound to arrest and surrender the suspects to the Court, given the provisions of article 98(1)?

Reasonable minds, reasonable lawyers may differ in their interpretation of the Statute. However, what is clear and indisputable is which body determines with authority and finality the issue of whether or not immunity is attached to the individual in question in any specific case, and that is the Court and only the Court.

It is an obvious fact, but it must be emphasized, that the ICC is a Court. It is not an association, it is not a non-governmental organization or any other type of organization. It is a criminal Court that determines individual criminal responsibility within the framework of the Rome Statute. States may choose to join the Court by acceding to the treaty or choose not to join the Court.

However, if a State chooses to join the Court and becomes a State party, then it is bound to accept and follow the provisions of the Rome Statute as they apply to States parties; this includes being bound by the decisions of the Court. So who decides the issue of the apparent tension between the apparent tension between articles 27, on the irrelevance of official capacity, and article 98(1), on cooperation with respect to waiver of immunity and consent to surrender? The answer is clear: it is not the States parties themselves; it is not the Security Council; it is not academics; it is the Court itself.

Regarding the specific case of President Al-Bashir, the Pre-Trial Chamber made this fact absolutely clear in its non-compliance decision regarding the Democratic Republic of the Congo, on 9 April 2014. The Court is the only and sole authority to decide whether or not the immunity is generally attached to Mr. Al-Bashir, as sitting Head of State, where applicable in this particular case. The conclusion finds support in article 119(1) of the Statute, which provides that any dispute concerning the judicial functions of the court shall be settled by the decision of the Court. This is a decision of the Court; therefore, simply put, it is binding on States parties that have joined the Court.

Similarly, the Court has ruled on several occasions that in the specific case of Mr. Al-Bashir, States parties are obliged to arrest and surrender him should he travel to their territory. That is why non-compliance findings have been made and referred to the Council in that case. For example, this obligation is clear from the same 2014 decision finding the Democratic Republic of the Congo in noncompliance to which I have referred. It is also crystal-clear from the June 2015 decision in which the Pre-trial Chamber also wrote that there exists no ambiguity or uncertainty with respect to the obligation of the Republic of South Africa to immediately arrest and surrender Mr. Al-Bashir to the Court.

What I want to stress by referring to this decision is that the Court has made plain on several occasions what the answer is to the apparent tensions between article 27 and 98 in the case of Mr. Al-Bashir. If States parties do not agree with these decisions or find them politically inconvenient, they are nevertheless bound to follow the decisions of the Court. If States parties disagree with these decisions, the appropriate response is to challenge them before the Court through the legal process if necessary and seek to appeal decisions if they disagree with them. That is the correct way. That

is the legitimate way to receive legal disputes and to respect the rule of law.

The President (*spoke in French*): I thank Ms. Bensouda for the clarifications made.

The representative of the Sudan has asked for the floor to make a further statement. I now give him the floor.

Mr. Mohamed (Sudan) (*spoke in Arabic*): Mr. President, I wish to thank you for giving me the opportunity to take the floor once again.

In response to the comments made by the Prosecutor, I should like to underscore that I limited myself in my comments on Darfur and on the jurisdiction of the Court, basing myself on accounts that come from the United Nations and from the African Union, which is recognized by the United Nations.

I should like to underscore a fundamental fact concerning justice. The Prosecutor is a part of the Court, but the Prosecutor has become a party to the dispute today. The mission of the Court is to restore justice. However, the Prosecutor of the Court, as well as the other Prosecutors, have chosen to be both judge and jury. This also applies to the previous Prosecutor. We would like to ask the Prosecutor, what crime did the President commit by visiting South Africa?

Concerning the contradiction between articles 27 and 98, I should like to refer the Council to the comments made by the first Prosecutor, Mr. Kirsch, on the issue of constructive ambiguity in the interpretation of the two articles. This contradiction and this constructive ambiguity, as described by the President of the Court, was exploited and continues to be exploited in order to go after Heads of State and to attack States, in particular States that do not have any influence in the world. That is what the Court has based its action on to date.

The meeting rose at 12.55 p.m.